

**BEFORE THE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Application for Certification
For the San Francisco
Electric Reliability Project

Docket No. 04-AFC-1

**MOTION TO TERMINATE PROCEEDING OF
CALIFORNIANS FOR RENEWABLE ENERGY, INC. (CARE)**

Pursuant to Title 20, California Code of Regulations, section 1720.2¹, Californians for Renewable Energy, Inc. (CARE) moves that the Committee and Commission Terminate the proceedings for the City and County of San Francisco (City or the Applicant) Application for Certification for the San Francisco Electric Reliability Project, Docket No. 04-AFC-1. Good cause exists for termination of this proceeding based on the November 4th 2004 notice by the Applicant to the Commission that it no longer has proposed site for its proposed project (i.e., site control).

The evidence of the Applicant's failure to pursue its application with due diligence include, but are not limited to, the Application for Certification (AFC) is no longer complete pursuant to the requirements of the Warren-Alquist Act California Public Resources Code Sections 25519 and 25520, the Applicant failed to meet its construction milestones as set out in its California Department of Water Resources Power Purchase Agreement, and more importantly it has failed to protect the California ratepayers and City taxpayers from what can best be characterized as fraudulent

¹ 1720. 2. Termination of NOI, AFC, and SPPE Proceedings. (a) The committee or any party may, based upon the applicant's failure to pursue an application or notice with due diligence, file a motion to terminate the notice or application proceeding. Within 30 days of the filing of such a motion, the committee may hold a hearing and provide an opportunity for all parties to comment on the motion. Following the hearing, the committee shall issue an order granting or denying the motion. (b) A committee order terminating a proceeding must be approved by the full commission.

NOTE: Authority cited: Sections 25213, 25218(e) and 25541.5, Public Resources Code.
Reference: Sections 25210, 25216. 5, 25502, 25519(b), and 25541, Public Resources Code.

charges for the sum of two DWR escrow payments made by California ratepayers of \$5,333,334 and for the \$1,056,520 charges to City and County of San Francisco taxpayers over the last two years for storage charges for the four turbine generators provided to the city as part of a state energy settlement with Williams Corp.

II.

The Warren-Alquist Act, California Public Resources Code Section 25519 holds that “in order to obtain certification for a site and related facility, an application for certification of the site and related facility shall be filed with the commission”. Without a specific site for the CCSF project, the AFC is no longer complete.

Further Section 25520 holds that the following information must be provided by the Applicant, all which the current AFC fails to provide, lacking a proposed site for the Facility.

§ 25520. Application; contents

The application shall contain all of the following information and any other information that the commission by regulation may require:

- (a) A detailed description of the design, construction, and operation of the proposed facility.
- (b) Safety and reliability information, including, in addition to documentation previously provided pursuant to Section 25511, planned provisions for emergency operations and shutdowns.
- (c) Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, population and load center data, and justification for the particular site proposed.
- (d) Any other information relating to the design, operation, and siting of the facility that the commission may specify.
- (e) A description of the facility, the cost of the facility, the fuel to be used, the source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatt hour.

(f) A description of any electric transmission lines including the estimated cost of the proposed electric transmission line; a map in suitable scale of the proposed routing showing details of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas, and existing transmission lines within one mile of the proposed route; justification for the route, and a preliminary description of the effect of the proposed electric transmission line on the environment, ecology, and scenic, historic and recreational values.

III.

The Applicant failed to and is now unable to meet its construction milestones as set out in its California Department of Water Resources Power Purchase Agreement

Schedule A

Key Milestones

2003	
Complete initial environmental assessment of sites	March 7
Negotiate dispatch limitations w/ CDWR	March 7
Issue RFP for EPC/O&M Contractor(s)	March 31
Select EPC/O&M Contractor(s)	July 1
Prepare draft AFC for filing w/ CEC	November 7
Obtain site control	December 31*
2004	
File final AFC w/ CEC	January 31*
Issue RFPs Fuel Supplier, Schedule Coordinator	February 27
Select Fuel Supplier, Schedule Coordinator	May 7
Prepare bond solicitation documents	August 6
Complete financing, execute EPC Contract	December 1*
Issue Notice to Proceed	December 2
2005	
First Firing of Turbines	May 1
Commercial Operation	June 1

* Power Purchase Agreement Milestone

Figure 1

Milestone SF PPA

Construct

(PPA) (See figure 1 from Schedule A attached PPA).

Under the terms of the PPA the Department of Water Resources has the

authority to terminate the contract without recourse by the Applicant. DWR has the right to terminate the Agreement without the approval of the City and without recourse against the DWR for any damages or other costs and without any further obligation or liability at any time upon twenty (20) days written notice if the City has not secured a site for the construction of the Facility by December 31, 2003; provided, the City uses best efforts to secure the site as soon as reasonably practicable; or the AFC submitted by city for Facility is not deemed data adequate by the CEC by the earlier of date the site is secured plus thirty (30) days and January 31, 2004.

Further the PPA is subject to Automatic Termination in the event any of the Final Terms are changed prior to the issuance of the Initial Bonds, or the Bond Purchase Agreement is not approved or executed by any of the parties thereto, the Initial Bonds are not issued for any reason after the execution of the Bond Purchase Agreement or the Bid Closing Time, or the Seller does not issue the notice to proceed under the EPC Contract by the Day following the issuance of the Initial Bonds. The "EPC Contract" means a contract with a creditworthy contractor for the engineering, procurement and construction of the Facility at a fixed price in form and substance reasonably satisfactory to the DWR.

Since the Applicant has not secured a site for the construction of the Facility, by December 31st 2003, the AFC submitted by city for Facility can not therefore be data adequate by January 31, 2004 as required by Construction Milestones for the project. Therefore the DWR has the authority to terminate the contract without recourse by the Applicant. Due to the lack of a site for the Facility the Final Terms have been changed by the Applicant prior to the issuance of the Initial Bonds therefore the Applicant is no longer able to meet the December 1st, 2004 Construction Milestone to Complete financing, and execute the EPC Contract for the Facility, and therefore the PPA is subject to the Automatic Termination clause of the PPA.

IV.

The Applicant has failed to protect the California ratepayers and City taxpayers from what can best be characterized as fraudulent charges for the sum of two DWR escrow payments made by California ratepayers of \$5,333,334 and for the \$1,056,520 charges to City and County of San Francisco taxpayers over the last two years for storage charges for the four turbine generators provided to the city as part of a state energy settlement with Williams Corp.

The terms of the Implementation Agreement and the Escrow Agreement entered into by the City and the State Attorney General on January 23rd, 2003 provided for an Escrow Payment to the City of \$2,666,667 upon the closing of the Agreement, and again on January 1st, 2004, for a total payment of \$5,333,334. In executing the Agreement the City acknowledged and agreed that monies from the Escrow Fund should be used only for those purposes which are reasonable and necessary for the development (and not the construction) of the Facility. Further, the City reviewed and approved a Development Budget for development of the Facility. This Development Budget was based upon Key Milestones identified in Schedule A (Figure 1 herein). Since no proposed site currently exists for the Facility, therefore monies utilized to date by the City from the Escrow Fund are no longer reasonable and necessary for the development of the Facility. At this time for the Attorney General to deposit an additional \$2,666,667 to the Escrow Fund on January 1st, 2005 would be an unreasonable and unnecessary expenditure of ratepayer/taxpayer funds, and would therefore constitute a continuing waste of ratepayer/taxpayer funds. We respectfully must object to such further expenditure of public funds.

Finally, the four combustion turbine generators provided to the City as part of a state energy settlement have yet to be put into use. Storage charges for the turbines cost San Francisco \$528,260 per year. Therefore, the \$1,056,520 is the charges to City and County of San Francisco taxpayers have born over the last two years, and to continue paying these storage fees therefore constitutes a continuing waste of the City taxpayer funds as well.

V.

Wherefore, for good cause shown, CALifornians for Renewable Energy, Inc. (CARE) respectfully requests that the Committee, and the Commission, approve CARE's motion to terminate the above captioned proceedings for the City and County of San Francisco Application for Certification for the San Francisco Electric Reliability Project, Docket No. 04-AFC-1.

Respectfully submitted,



Lynne Brown – Vice-President
CALifornians for Renewable Energy, Inc.
(CARE)
Resident, Bayview Hunters Point
24 Harbor Road
San Francisco, CA 94124



Michael E. Boyd - President
CALifornians for Renewable Energy, Inc.
(CARE)
5439 Soquel Drive
Soquel, CA 95073

December 28th, 2004

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make

this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 28th day of December 2004, at Soquel, California.



Michael E. Boyd – President, CARE
CALifornians for Renewable Energy, Inc. (CARE)
5439 Soquel Dr.
Soquel, CA 95073-2659
Tel: (408) 891-9677
Fax: (831) 465-8491
E-mail: michaelboyd@sbcglobal.net

APPLICATION FOR CERTIFICATION
FOR THE SAN FRANCISCO ELECTRIC
RELIABILITY PROJECT

) Docket No. 04-AFC-1
)
) PROOF OF SERVICE

I, Michael E. Boyd declare that on December 28th, 2004 I deposited copies of the attached Motion to Terminate Proceedings by electronic mail at Soquel, CA

DOCKET UNIT
CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 04-AFC-01
DOCKET UNIT, MS-4
1516 Ninth Street
Sacramento, CA 95814-5512

In addition to the documents sent to the Commission Docket Unit, also send individual copies of all documents to:

APPLICANT

* Barbara Hale, Power Policy Manager
San Francisco Public Utilities Commission
1155 Market Street, 4th Floor
San Francisco, CA 94102
BHale@sfgwater.org

Applicant Project Manager
Karen Kubick
SF Public Utilities Commission
1155 Market St., 8th Floor
San Francisco, CA 94103
kkubick@sfgwater.org

APPLICANT'S CONSULTANTS

Steve De Young
De Young Environmental Consulting
4155 Arbolado Drive
Walnut Creek, CA 94598
steve4155@astound.net

John Carrier
CH2MHill
2485 Natomas Park Drive, Suite 600
Sacramento, CA 95833-2943

jcarrier@ch2m.com

COUNSEL FOR APPLICANT

Jeanne Sole
San Francisco City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102-4682

INTERESTED AGENCIES

Emilio E. Varanini, III, General Counsel
California Power Authority
910 P Street, Suite 142A
Sacramento, CA 95814
Emilio.varanini@dgs.ca.gov

Electricity Oversight Board
770 L Street, Suite 1250
Sacramento, CA 95814

Independent System Operator
Jeffery Miller
151 Blue Ravine Road
Folsom, CA 95630
jmillier@caiso.com

INTERVENORS

Jeffrey S. Russell
Vice President, West Region Operations
Mirant California, LLC
1350 Treat Blvd., Suite 500
Walnut Creek, CA 94597
Jeffrey.russell@mirant.com

Michael J. Carroll
Latham & Watkins LLP
650 Town Center Drive, Suite 2000
Costa Mesa, CA 92626
michael.carroll@lw.com

Potrero Boosters Neighborhood Association

Dogpatch Neighborhood Association
Joseph Boss
934 Minnesota Street
San Francisco, CA 94107
joeboss@joeboss.com

Robert Sarvey
501 West Grantline Road
Tracy, CA 95376
SarveyBob@aol.com

Greenaction for Health & Environmental Justice
c/o Marc Harrison
Karl Krupp
One Hallidie Plaza #760
San Francisco, CA 94706
Karl@greenaction.org

San Francisco Community Power
c/o Steven Moss
2325 Third Street # 344
San Francisco, CA 94107
steven@sfpower.org

Lynne Brown Member, CARE
Resident, Bayview Hunters Point
24 Harbor Road
San Francisco, California 94124
L_brown123@yahoo.com

I declare under penalty of perjury that the foregoing is true and correct.

Michael E. Boyd

EXECUTION COPY

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of the date set forth below, by and between the DEPARTMENT OF WATER RESOURCES with respect to its responsibilities pursuant to the Department Act (as hereinafter defined) regarding the Fund (as hereinafter defined) separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (in such capacity, the “Department”) and the CITY AND COUNTY OF SAN FRANCISCO (the “Seller”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the Department is authorized under the Department Act to contract with any person, local publicly owned electric utility, or other entity, upon those terms, limitations, and conditions as it prescribes, for the purchase of power on such terms and for such periods as the Department determines and at such prices the Department deems appropriate, taking into account, among other things, the intent to achieve an overall portfolio of contracts for energy resulting in reliable service at the lowest possible price per kilowatthour, and

WHEREAS, the Seller is authorized by Resolution of the Board of Supervisors of the City and County of San Francisco to enter this agreement and by the Charter of the City and County of San Francisco to establish, finance, purchase, own, operate, acquire, or construct generating facilities and to sell the output therefrom to the Department, subject to the terms of this Agreement and the Charter,

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. Unless otherwise defined herein or in any appendix hereto, the following terms shall have the respective meanings in this Agreement:

“Agreement” shall mean this Power Purchase Agreement and the appendices hereto, which are hereby incorporated herein by reference.

“Ambient Facility Output Table” means the table to be created as set out in section 5 of Appendix C that will relate expected Facility output (in MW) to ambient temperature, with Rated Capacity as the expected output at Contract Conditions.

“ASME” means the American Society for Mechanical Engineers.

“Authorized Representative” shall mean the person or persons designated in Appendix A as having full authority to act on behalf of a Party for all purposes hereof.

“Availability Notice” has the meaning set forth in Section 2.05(c).

“Billing Address” means the billing address specified in Appendix A or as otherwise specified by the Department.

“Billing Heat Rate” means the lesser of the Guaranteed Heat Rate and the Test Heat Rate.

“Bid Closing Time” means the time deadline by which Bond Bids must be submitted in connection with the competitive sale of the Initial Bonds in accordance with the Bond Bid Documents.

“Bond Bids” the bids submitted to the Seller for the purchase of the Initial Bonds in accordance with the Bond Bid Documents in connection with the competitive sale of the Initial Bonds.

“Bond Bid Documents” the notice of sale, bid form, disclosure documentation and other documents published in connection with a competitive sale of the Initial Bonds, including the final pricing published to the market pursuant thereto.

“Bond Purchase Agreement” means the agreement between or among the Seller and the underwriter(s) for the purchase of Initial Bonds.

“Bond Sale Time” means the hour that the Seller signs the Bond Purchase Agreement.

“Bonds” means any (a) Initial Bonds, or (b) any bonds, notes, certificates or other indebtedness issued by the Seller for any other purpose in connection with the Facility, including refunding bonds, which are approved by the Department.

“BTU” means British Thermal Units.

“Business Day” means any Day other than a Saturday or Sunday or a United States holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City.

“CAISO” means the California Independent System Operator or any successor thereto.

“CAISO Participating Generator Agreement” means the agreement to be executed by the Seller and CAISO to establish the terms and conditions on which the Seller and CAISO will discharge their respective duties and responsibilities under the CAISO Tariff.

“CAISO Tariff” means the CAISO tariff on file with the FERC and in effect from time to time.

“Capacity Payment” means the monthly payment for Rated Capacity that the Department makes to the Seller as such payment is calculated pursuant to Section 2.02(a).

“Commercial Operation” means the Facility has provided Energy to the Department as measured under the terms of the CAISO Participating Generator Agreement.

“Commercial Operation Date” means the date on which the Department accepts the Seller's certification that all the requirements of commercial operation have been achieved in accordance with Appendix C hereto. Such acceptance shall occur within ten (10) Business Days of the Department's receipt of a complete Performance Test Report. The determination as to whether a Performance Test Report will be deemed “complete” shall be within the Department's sole discretion.

“Contract Conditions” means conditions that satisfy the requirements of the International Standards Organization standard conditions of 59 degrees Fahrenheit and sixty (60) percent relative humidity at sea level.

“CPUC” means the Public Utilities Commission of California or any successor thereto.

“Day” means the period beginning 12:00 midnight and ending on the following 12:00 midnight (Pacific Time).

“Defaulting Party” shall have the meaning set forth in Section 7.01.

“Delivery Point” means the point of interconnection on the transmission grid currently controlled by CAISO, on the high side of the Facility's transformer.

“Department Act” means ABX1 1 (Chapter 4 of the Statutes of 2001, First Extraordinary Session), as amended by ABX1 31 (Chapter 9 of the Statutes of 2001, First Extraordinary Session) codified as Section 80000 *et seq.* of the Water Code.

“Department Commitment Time” means (a) with respect to a competitive sale of the Initial Bonds, an hour 24 hours prior to the Bid Closing Time, and (b) with respect to a negotiated sale of the Initial Bonds, the Bond Sale Time; provided that the Department Commitment Time shall be extended until the Seller has (i) entered into the EPC Contract, (ii) entered into a Management Agreement with respect to its obligations hereunder, and (iii) with respect to a negotiated sale of the Initial Bonds, established the Final Terms and communicated them to the Department in accordance with Section 3.05(c) hereof.

“Department Determination Certificate” means a written certificate(s) delivered by the Department to the Seller not later than ten (10) days prior to the bidding of the EPC Contract (which bidding date shall be disclosed to the Department thirty (30) days prior thereto) setting forth certain determinations required to be made by the Department hereunder, which certificate(s) shall become a part of this Agreement.

“Department Fuel Plan” shall have the meaning set forth in Section 2.06.

“Dispatch” means the right of the Department to control or direct the delivery of Energy from the Facility, other than by submission of a Schedule to CAISO, in accordance with the provisions of this Agreement

“Dispatched Energy” means the amount of Energy actually generated for delivery by the Seller from the Facility pursuant to a Dispatch by the Department, as measured at the Electricity Metering Point.

“DS” shall have the meaning set forth in Section 2.02(a).

“EA” shall have the meaning set forth in Section 4.01(a) hereof.

“Effective Heat Rate” shall mean the Fuel Quantity divided by Hourly Energy.

“Electricity Metering Point” means the location on the high side of the Facility's transformer at which the Seller maintains meters and metering devices used to measure the delivery and receipt of Energy for payment purposes.

“Energy” means electric energy produced by the Facility in accordance with the Department's Schedule or Dispatch and measured in MW-hrs at the Electricity Metering Point.

“EPC Contract” means a contract with a creditworthy contractor for the engineering, procurement and construction of the Facility at a fixed price in form and substance reasonably satisfactory to the Department.

“Event of Default” shall have the meaning set forth in Section 7.01.

“Excused Hours” means those hours for which Seller is excused from its contractual obligations to deliver Energy to Buyer due to (a) Force Majeure, or (b) Scheduled Maintenance Outage, provided that only that number of weeks per year of Scheduled Maintenance Outage set forth in a Department Determination Certificate upon consideration of Prudent Industry Practices, manufacturer warranties and other relevant matters may qualify as Excused Hours.

“Facility” means the natural gas fired simple-cycle combustion turbine(s) generation station to be located in the City and County of San Francisco or San Francisco International Airport, consisting of four (4) GE LM6000 gas turbine package with other equipment necessary for the generation and transmission of Energy to the Delivery Point. The Facility shall be capable of and shall have all required permits necessary for operating the number of operating hours per year specified in a Department Determination Certificate.

“Facility Cost” means the fixed EPC Contract price for the Facility, all verified development costs paid for by Seller prior to the Department Commitment Time and any development costs approved by the Department expected to be paid for by Seller (excluding all development costs paid pursuant to the Implementation Agreement).

“FERC” means the Federal Energy Regulatory Commission or any successor thereto.

“Final Terms” means the principal amount(s), interest rates(s), redemption provisions and premiums and other terms and provisions of the Initial Bonds which shall be set forth in the Bond Purchase Agreement.

“FOM” shall have the meaning set forth in Section 2.02(a).

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not reasonably foreseeable as of the date of this Agreement, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, including, but not limited to: shortages of materials or supplies (except if caused by the Seller’s failure to maintain sufficient inventories and stores of spare parts), strikes or labor disruptions (except strikes or labor disputes resulting from unsafe working environment or unfair labor practices), interruptions of fuel supply, water supply or transmission, damages or breakdown of machinery, drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to obtain and maintain applicable governmental approvals from a governmental authority resulting solely from the enactment, repeal and amendment in any applicable law or in the interpretation or application of any applicable law by such governmental authority, in each case occurring after the effective date hereof, or the failure of such governmental authority to comply with statutorily mandated permitting time requirements. Force Majeure shall not include any events such as, but not limited to, events arising from (a) the failure to operate and maintain the Facility in accordance with Prudent Industry Practices; (b) economic factors including the price of services or materials, (c) the inability to obtain financing, or (d) litigation.

“Fuel Manager” means the person designated by the Seller who performs the services of either Contracted Marketer (as such term is defined in the utility tariff) in the San Diego Gas & Electric utility system, or Authorized Agent (as such term is defined in the utility tariff) in the Pacific Gas & Electric utility system.

“Fuel Payment” means the monthly payment for fuel, if any, that the Department makes to the Seller or, if negative, made by Seller to Department, as set forth in Section 2.02(c).

“Fuel Price” shall mean for any period the gas cost (\$/MMbtu) as determined under either the Seller Fuel Plan or the Department Fuel Plan or as otherwise determined pursuant to Section 2.06, as applicable.

“Fuel Quantity” means the hourly metered usage of gas (Mmbtu) for the Facility to generate power to meet a Schedule or Dispatch by the Department, plus equivalent gas at the Guaranteed Heat Rate for any CAISO imbalance energy provided as permitted hereunder. Such hourly metered usage of gas shall be determined based on the ratio of (1) the actual output of the Facility to supply the Department’s Scheduled Energy (but not energy generated in excess of the Department hourly schedule, unless pursuant to a Department Dispatch) or Dispatched Energy

(but not energy generated in excess of a Department Dispatch) to (2) the actual total output of the Facility.

“Fund” means the Department of Water Resources Electric Power Fund established by Water Code Section 80200.

“Governmental Approval” means, without limitation, any authorization, consent, approval, license, ruling, permit, exemption, variance, entitlement, order, judgment, decree, declaration of or regulation by any Governmental Authority relating to the acquisition, ownership, occupation, construction, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Agreement.

“Governmental Authority” means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof.

“Gross Hourly Fuel Costs” means Fuel Quantity multiplied by the Fuel Price.

“Guaranteed Availability” means the Target EA set forth in Section 4.01(a).

“Guaranteed Heat Rate” shall be 10,000MMBtu/kWh (higher heating value). This value assumes the use of gas compression. If gas compression is not required because of higher delivery pressure, the Guaranteed Heat Rate will be reduced by a percentage not less than 2% nor more than 5% as set forth in a Department Determination Certificate.

“Heat Rate Factor” means (a) when fuel supplied by the Seller, the lesser of: 1.0, and (Billing Heat Rate/Effective Heat Rate), and (b) when fuel supplied by the Department the [lesser of: 1.0, and (Billing Heat Rate/Effective Heat Rate)]-1.

“Hourly Ambient Capacity” means, for any hour, the MW value from the Ambient Facility Output Table corresponding to the ambient temperature for such hour.

“Hourly Energy” means the total of Scheduled Energy and Dispatched Energy for any hour.

“Hourly Fuel Costs” means the Gross Hourly Fuel Costs multiplied by the appropriate Heat Rate Factor.

“Implementation Agreement” means the Implementation Agreement, among the Seller, the Department, the California Consumer Power and Conservation Financing Authority and the Attorney General of the State, providing for, among other things, delivery of four turbines from the Attorney General to the Seller for the construction of the Facility and the delivery of certain moneys by the Attorney General to be held in escrow for the development of the Facility and outlining the duties and responsibilities of the parties thereto with respect to the development, acquisition, construction and operation of the Facility.

“Initial Bonds” means bonds, notes, certificates or other indebtedness issued by the Seller to finance the Facility Cost.

“Invoice Month” means the calendar month immediately following the month in which the Seller provided Rated Capacity and Energy for which an invoice is being issued.

“KW-hr” means kilowatt-hour, a measure of electric energy produced in one hour.

“Law” means any statute, law, rule or regulation imposed by a Governmental Authority, whether in effect now or at any time in the future.

“LDC” shall have the meaning set forth in Section 2.06.

“Management Agreement” means any agreement(s) in form and substance reasonably satisfactory to the Department, pursuant to which one or more creditworthy entities agrees to (a) operate and maintain the Facility on behalf of Seller, (b) provide fuel procurement and management, major maintenance, transmission, Scheduling, Dispatch and other services, and establishing a Variable O&M Payment that is fixed for a term of at least 10 years.

“Major Milestones” means the dates set forth in Appendix B.

“Monthly Availability Hours” means all hours in a month except for Excused Hours for such month.

“Monthly Fuel Costs” shall mean the aggregate of Hourly Fuel Costs for a month.

“MW” means megawatt, a measure of electric generating capacity.

“MW-hr” means megawatt-hour, a measure of electric energy produced by a one (1) MW source in one hour.

“MW-mo” means megawatt-month, a measure of electric capacity from a one (1) MW source available in one month.

“NERC” means the North American Electric Reliability Council.

“Non-Defaulting Party” shall have the meaning set forth in Section 7.01.

“Party” means the Department or the Seller.

“Prudent Industry Practices” means those practices, methods and acts (including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities) which at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable laws and governmental requirements, and (b) reliability, safety, and

environmental protection. “Prudent Industry Practices” shall not mean that operator is required to use the optimum practice, method, or act, but only requires the use of acceptable practices, methods or acts generally accepted in the United States in performing its obligations hereunder in accordance with Prudent Industry Practices.

“Purchase Price” means the aggregate monthly payment that the Department makes to the Seller for the Capacity Payment, Variable O&M and the Fuel Payment.

“Rate Agreement” means the Rate Agreement between the Department and State of California Public Utilities Commission (“CPUC”) adopted by the CPUC on February 21, 2001 in Decision 02-02-051.

“Rated Capacity” means the power output capability of the Facility or a turbine constituting a part of the Facility, as appropriate, which may change from time to time, expressed in MW, as determined and adjusted to Contract Conditions based on performance tests conducted upon Commercial Operation and periodically thereafter in accordance with Section 2.03 and testing procedures set forth in Appendix C.

“RPLC” shall have the meaning set forth in Section 2.02(a).

“Schedule” means the right of the Department to schedule delivery of Energy from the Facility, in accordance with the provisions of the Agreement, pursuant to CAISO scheduling protocols or the protocols of any successor thereto.

“Scheduled Energy” is the amount of energy associated with a Department Schedule.

“Scheduled Maintenance Outage” means an interruption of the Facility's availability that (a) has been coordinated in advance with the Department pursuant to Section 3.02, and (b) is for the purpose of performing work on specific components of the Facility that would limit the power output of the Facility.

“Seller Fuel Plan” shall have the meaning set forth in Section 2.06.

“State” means the State of California.

“Term” shall have the meaning set forth in Section 2.08.

“Test Heat Rate” shall be the weighted average of the heat rates of the turbines comprising the Facility, as determined pursuant to the procedures in Appendix C.

“Trust Estate” means all revenues under any obligation entered into, and rights to receive the same, and monies on deposit in the Fund and income or revenue derived from the investment thereof.

“Unit” means each combustion turbine comprising the Facility.

“Variable O&M Payment” means the monthly payment for operations and maintenance related to Energy that the Department makes to the Seller as such payment is calculated pursuant to Section 2.02(b).

Section 1.02. Rules of Interpretation. Unless otherwise provided herein: (a) words denoting the singular include the plural and vice versa; (b) words denoting a gender include both genders; (c) references to a particular part, clause, section, paragraph, article, party, exhibit, schedule or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or a party, exhibit, schedule or other attachment to the document in which the reference is contained; (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in the document in which the reference is contained; (e) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time; (f) a definition of or reference to any document, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used; (g) a reference to any person includes such person's successors and permitted assigns in that designated capacity; (h) any reference to “dollars” or “\$” shall mean United States dollars unless otherwise specified; (i) any reference to time is a reference to the time then prevailing, whether standard or daylight savings time, in the specified time zone; (j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or Day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or Day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day); (k) words such as “hereunder,” “hereto,” “hereof” and “herein” and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and (l) a reference to “including” means including without limiting the generality of any description preceding such term.

ARTICLE II

PURCHASE AND SALE OF CONTRACT CAPACITY AND ENERGY

Section 2.01. Purchase and Sale of Rated Capacity and Energy. On and after the Commercial Operation Date and for the remaining Term of this Agreement thereafter, the Seller shall provide and make available to the Department, and the Department shall purchase, Rated Capacity, and if requested by the Department pursuant to this Agreement, Energy, from the Facility at the Delivery Point, and the Department shall pay the Seller the Purchase Price. The Seller shall be responsible for any costs or charges imposed on or associated with the Rated

Capacity and Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Rated Capacity and Energy or its receipt at and from the Delivery Point.

Section 2.02. Determination of Purchase Price. The Purchase Price to be paid by the Department for Rated Capacity and Energy provided under this Agreement shall consist of an aggregate payment equal to the sum of the Capacity Payment, Variable O&M Payment and Fuel Payment.

(a) Capacity Payment. On the basis of the Rated Capacity, commencing on the Commercial Operation Date and for the remainder of the Term, the Department shall pay the Capacity Payment, on a monthly basis in arrears, regardless of whether the Department requests that the Seller deliver Energy from the Facility. Such Capacity Payment shall be a monthly charge established not later than the Department Commitment Time for each fiscal year based on the following formula and allocated among months (shaped) on a \$ per MW-mo basis as determined by the Department:

$$\text{The Capacity Payment} = \text{FOM} + \text{DS} + \text{RPLC}$$

FOM = fixed operation and maintenance expenses as established for such fiscal year pursuant to a Management Agreement, including amounts for insurance, fixed fuel cost components, Seller administrative costs, capital improvements or deposits to a major maintenance reserve fund less any amounts in such major maintenance reserve fund not needed for the purposes thereof.

DS = [(the actual debt service payable on the Bonds) + (any other amount payable or required to be deposited pursuant to the indenture or resolution providing for the issuance of the Bonds)] - [(any credits for earnings or other amounts pursuant to the indenture or resolution providing for the issuance of the Bonds) + (in the years(s) in which the final maturit(y)(ies) of the Bonds occurs, the amount of any debt service or other reserve fund(s) held under such indenture or resolution)] during such fiscal year.

RPLC = the cost of any real property lease for the Facility payable during such fiscal year.

To the extent that the Facility achieves Commercial Operation on a Day other than the first Day of a calendar month, and to the extent that the Term ends on a Day other than the last Day of a calendar month, the Department shall pay the Capacity Payment on a pro-rata basis for that month.

(b) Variable O&M. Commencing on the Commercial Operation Date, the Department shall pay the Seller a payment for the variable costs of operation and maintenance associated with Energy delivered by the Seller from the Facility pursuant to the Department's Schedule or Dispatch determined pursuant to a Management Agreement (the "Variable O&M Payment"), on a monthly basis in arrears.

(c) Fuel Payment. Commencing on the Commercial Operation Date and for the remainder of the Delivery Period, for each month in arrears, the Department shall pay the Seller the Monthly Fuel Costs (negative Monthly Fuel Costs reflect a payment due from the Seller to the Department resulting from an excessive heat rate and Department-supplied fuel).

In no event shall FOM or the Variable O&M Payment include the cost of any litigation or administrative actions, disputes or challenges with respect to the Facility or this Agreement other than the costs of obtaining and complying with permits for the Facility in the normal course of business which are not subject to any litigation or administrative actions, disputes or challenges.

Section 2.03. Determination of Rated Capacity. The Rated Capacity for purposes of calculating the Capacity Payment will be established by testing and adjustment as follows: Not less than five days prior to scheduled commercial operation date, and thereafter during the period beginning June 1 and ending June 30 in each year, the Seller will conduct a four hour performance test of the Facility during operations using installed instrumentation, calibrated by the Seller (except the Electric Metering Equipment which will be calibrated in accordance with CAISO Requirements) to determine the maximum MW output of the Facility as measured at the Delivery Point. In addition, each of the Department and the Seller may request up to two additional tests per year (at any time) utilizing the same four hour test procedures. After each test, the Seller will use performance curves certified by the original equipment manufacturer/architect engineer/vendor to adjust the test results to ISO Conditions. The ISO Condition-adjusted test results will be the "Rated Capacity," effective on the first day of the month following the month in which the Department receives written notice of the test results or as of the commercial operation date, as the case may be. The Seller will provide forty-eight (48) hours notice to the Department prior to each test, and provide the Department with written notice of the test results and subsequent adjustment to the Contract Quantity within the later of five (5) Business Days of each test or as soon as practicable. The Department is entitled to witness any test of the Facility. The Department may request third party calibration of instrumentation used in any test, and in the event that a deviation equal to or more than 2% is found, the Seller shall bear the cost of such calibration, and if the instrumentation is within 2% deviation then the Department shall bear such cost. The results of the tests shall be used to adjust the Rated Capacity for the purpose of making capacity payments hereunder. Any test pursuant to this Section 2.03 shall be conducted in accordance with the procedures set forth in Appendix C

Section 2.04. Transmission. Notwithstanding anything to the contrary herein, the Seller shall arrange and shall obtain Schedule Coordinator services necessary to deliver the Product to the Delivery Point. The Seller shall be responsible for all charges due to the CAISO, and entitled to receive all payments from the CAISO, related to deviations of Facility output from the Facility's final hour-ahead CAISO schedule; provided, however, to the extent such a deviation results from a dispatch instruction that is directed by the Department, the Department shall be responsible for that portion of any charges due to the CAISO, and entitled to receive that portion of any payments from the CAISO that are attributable to the generation levels specified in such dispatch instruction. The Seller shall not use the CAISO imbalance markets to effect delivery of Energy hereunder except with respect to any underdeliveries by the Seller in the case where the Facility trips off line, in which case the Seller shall submit a schedule change as soon thereafter as reasonably practical.

Section 2.05. Dispatch and Scheduling. (a) Dispatch Generally. Commencing on the Commercial Operation Date, the Department shall have the discretion to Schedule or Dispatch the Facility and the Seller shall comply with any such direction to Schedule or Dispatch of the Facility, consistent with Facility operating parameters. Such Scheduling rights shall include the use of the CAISO day-ahead and hour-ahead scheduling processes, and any other scheduling process that may be implemented by CAISO. Such Dispatch rights shall include real time dispatchability and shall not be limited by any factors other than Facility operating parameters. In addition, the Seller shall make bids into the CAISO Ancillary Services markets as instructed by the Department, and shall comply with any resulting dispatch instructions from CAISO pursuant to all CAISO protocols. Any resulting Ancillary Service-related revenues paid by CAISO to the Seller shall be passed on to the Department. The Seller shall enter into and comply with a CAISO Participating Generator Agreement. The Department Determination Certificate shall set forth any limitations on Dispatch and Scheduling.

(b) Scheduling and Dispatch for Delivery. Commencing on the Commercial Operation Date, if the Facility is Dispatched in a manner consistent with the provisions of this Agreement, and Prudent Industry Practices, then the Seller shall comply with the Schedule or Dispatch; provided, however, that in the event of any conflict among the foregoing standards, each such standard shall be given precedence in the order in which it is listed.

(c) Process for Scheduling. The Seller shall notify the Department prior to each operating day of the capacity that is expected to be actually available for Schedule or Dispatch on such operating day, taking into account factors such as expected ambient conditions (by using the Ambient Facility Output Table) and the operating status of the Facility, and shall update such notifications as ambient conditions and operating status change (each such notification an “Availability Notice”).

Section 2.06. Fuel Supply Arrangements. By three months before the scheduled Commercial Operation Date of the Facility and thereafter each year three months before the anniversary of the commercial operation date of the Facility, the Seller shall provide to the Department a proposed Annual Fuel Plan detailing prices or pricing methodologies for the acquisition of fuel by the Seller on the Department’s account for the next Contract Year. By no later than two months before the scheduled Commercial Operation Date of the Facility and thereafter each year two months before the anniversary of the commercial operation date of the Facility, the Department shall notify the Seller if the Department accepts the Seller’s proposed Annual Fuel Plan (or a negotiated revision thereto). If such a plan is accepted, it shall become a “Seller Fuel Plan” for the acquisition of fuel by the Seller on the Department’s account. During the term of any the Seller Fuel Plan, the Seller shall maintain the Department's account within the monthly imbalance tolerance permitted by the appropriate local distribution company (“LDC”). The Seller shall be solely responsible for any fuel imbalance charges assessed by such LDC during the term of a Seller Fuel Plan. If no Seller Fuel Plan is accepted, the Department shall acquire fuel on its own account (the “Department Fuel Plan”). In the event of a Department Fuel Plan, gas must be delivered to the Seller at a mutually agreed upon point and the Department shall be solely responsible for any LDC charges incurred to deliver that gas to the Facility. Where the Department fails to deliver the required gas under a Department Fuel Plan,

or where the Department notifies the Seller that it will not deliver such gas for any period under a Department Fuel Plan, the Seller shall be obligated to use its best efforts to deliver gas in sufficient quantity to allow the Seller to produce and deliver energy scheduled as provided hereunder. In such instance, on each such day, the Seller shall use best efforts to deliver gas the cost of which does not exceed that day's Gas Daily Large Package Midpoint + \$.01/MMBtu. Any fuel imbalance charges assessed by the LDC resulting under a Department Fuel Plan shall be borne by the Department. Fuel imbalance charges resulting from Force Majeure in respect of the Facility shall be divided equally between the Department and the Seller. The Seller shall be solely responsible to acquire and pay for any and all gas used to generate energy other than the Department's scheduled energy. It is the intent of the parties that natural gas be provided to the Facility at cost to the Department without mark-ups or additional charges. In no case shall any fuel management fees or fuel manager fees assessed to the Department exceed \$.01/MMBtu. When the Department supplies gas to the Facility it shall have all rights and benefits as if it were acting as fuel manager. The Department shall not be subject to any more or additional costs or charges than if it had acted as fuel manager for the Facility, including, imbalance charges assessed within the period permitted for imbalances in the then-effective applicable local natural gas distribution utility tariff or month end imbalance tolerances permitted by such tariff and fees for services.

Section 2.07. Sources of Payment; No Debt of State. Department's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any damages arising as the result of any breach or Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.08. Term. Unless earlier terminated pursuant to Article VII, the term of this Agreement (the "Term") shall commence at 12:00 a.m. (Pacific time) on the date of execution of this Agreement and shall continue until the tenth (10th) anniversary of such date of the Commercial Operation Date; provided, however, (a) Seller may terminate this Agreement at any time from and after the fifth (5th) anniversary of such date of execution upon one (1) year written notice to the Department, and (b) the Department may terminate this Agreement at such time there will no longer be any DS component of the Capacity Payment.

Section 2.09. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, the Department covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on

deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by the Department pursuant to this Agreement and the Department Act. As provided in Section 80200 of the Water Code, while any obligations of the Department pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the CPUC shall not be diminished or impaired in any manner that would affect adversely the interests and rights of the Seller under this Agreement.

Section 2.10. Seller's Obligations; No Debt of Seller. Seller's execution of this Agreement and its obligations hereunder shall not constitute a debt or liability of the City and County of San Francisco. The execution of this Agreement shall not directly, indirectly or contingently obligate the City and County of San Francisco to levy or pledge any form of taxation or make any appropriation for the payment of any amounts under this Agreement. Any obligation of Seller arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to any damages arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Seller hereunder, shall be satisfied solely from payments received or to be received from Department or under each Management Agreement. Seller's obligations hereunder shall be an operating expense payable prior to payment of the Bonds.

ARTICLE III OPERATION OF THE FACILITY; FINANCING OF THE FACILITY

Section 3.01. Permits. The Seller shall, at its expense, acquire and maintain in effect, from any and all government agencies with jurisdiction over the Seller and/or the construction or operation of the Facility, all Governmental Approvals, in each case necessary at that time (i) for the construction of the Facility in accordance with this Agreement; and (ii) for the operation of the Facility to provide the Rated Capacity and Energy. The Seller shall operate the Facility in compliance with the Facility's Governmental Approvals. Hours of the Day during which the Facility is able to produce and deliver Energy shall not be limited by permit conditions.

Section 3.02. Operation and Maintenance of the Facility. (a) Generally. The Seller shall operate and maintain, and arrange Scheduled Maintenance Outages for, the Facility in accordance with Prudent Industry Practices. The Seller will make reasonable efforts to schedule planned outages at times agreeable to the Department and will provide the Department notice of planned and unplanned outages. The Seller shall not schedule planned outages during the months of June, July, August, September or October.

(b) Notification and Dispatch. The Seller shall notify the Department that it has planned a Scheduled Maintenance Outage at least twenty-four (24) hours in advance; provided, however, such notice shall be seven (7) Days in advance for any Scheduled Maintenance Outage that is expected to be longer than a week. Such request shall identify the proposed start time and duration of the Scheduled Maintenance Outage. The Department may not Schedule or Dispatch the Facility during a Scheduled Maintenance Outage.

Section 3.03. Reports; Inspection Rights; Change to Facility. From the date of execution of this Agreement through the Commercial Operation Date, the Seller shall supply progress reports to the Department monthly, within fifteen (15) Days after the end of each month, describing progress toward completion of the Major Milestones. If the Facility has not achieved Commercial Operation by the target Commercial Operation Date set forth in Appendix B, the Department may require the Seller to supply progress reports more frequently as reasonably determined necessary by the Department in its sole discretion. Such reports shall include status of accomplishing major development and construction milestones including obtaining all permits, securing project financing, acquisition and installation of major equipment, and start-up testing. The Department may inspect the Facility, the Facility construction site or on-site the Seller data and information pertaining to the Facility during business hours upon reasonable notice. The Seller will not increase the capacity or change the design of the Facility without the written approval of the Department.

Section 3.04. Metering. The meter for the Facility shall be on the high side of the Facility transformer. Metering shall conform to CAISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for the Department's account (i.e. notwithstanding any required GMM adjustments, the Seller shall be deemed to have delivered the full metered amount of energy from the Facility). The Seller shall provide CAISO metering settlement data to the Department on a monthly basis, and, at the Department's option and expense, real-time access to meter data via appropriate telecommunications equipment.

Section 3.05. Financing of the Facility. (a) General. The Seller shall use its best efforts to finance the Facility Cost with the Initial Bonds. The Initial Bonds will be sold by means of a competitive sale or a negotiated sale as determined pursuant to subsection (d).

(b) Provisions applicable to a Competitive Sale of the Initial Bonds. The following provisions of this subsection (b) shall apply to a competitive sale of the Initial Bonds. The Department and the Department's financial advisor shall participate in, and the Seller and the Seller's financial advisor shall cooperate with and take into account all input from the Department and the Department's financial advisor regarding (i) structuring of the Initial Bonds, (ii) premarketing the transaction to potential bidders, (iii) establishment of all preliminary and final pricing scales, and (iv) such other functions and undertakings as the Department may determine in connection with the sale of the Initial Bonds.. The Seller shall consult with the Department in scheduling the competitive sale of the Initial Bonds. The Seller shall give the Department written notice of the planned dates for (1) notice of a competitive sale of the Initial Bonds, and (2) the Bid Closing Time at least three (3) weeks prior to the distribution of the Bond Bid Documents. All Bond Bids shall be delivered to the Department immediately upon the opening thereof.

(c) Provisions Applicable to Negotiated Sale of the Initial Bonds. The provisions of this subsection (c) shall apply to any sale of the Initial Bonds by means of a negotiated sale. The Seller shall notify the Department in writing five days prior to the start of marketing and pricing of the Initial Bonds which notice shall specify the Bond Sale Time. Pricing shall begin no later than 72 hours prior to the Bond Sale Time. The Department shall be entitled to full participation

in the Initial Bond pricing process. Final Terms shall be established by the Seller no later than 48 hours prior to the Bond Sale Time and communicated to the Department in writing.

(d) Competitive or Negotiated Sale. If upon consideration of all facts and circumstances pertaining to the financing of the Facility and the issuance of the Initial Bonds, including premarketing of the Initial Bonds conducted by the Parties' financial advisors, discussions by the Parties with counsel, rating agencies, bond insurance companies and other bond market participants and such other information as the Parties shall deem necessary or relevant, the Department determines that a competitive sale of the Initial Bonds will result in a cost of such Facility that is or will become unacceptable or is otherwise not in the best interests of the Department, the Department may so advise the Seller in writing at any time after the Seller has secured a site for the Facility or filed an AFC with the CEC. The Seller shall advise the Department in writing within one week of receipt of the Department's notice either that it will or will not proceed with a negotiated sale of the Initial Bonds. The determination of whether to proceed with the sale of the initial Bonds by means of a negotiated sale shall be in the Seller's sole discretion. In the event the Seller elects to proceed with the negotiated sale of the Initial Bonds, the Seller shall suspend the competitive sale of the Initial Bonds and the Seller shall obtain all approvals necessary to conduct such a negotiated sale. The Seller and the Department shall select and appoint investment banking firms reasonably acceptable to both Parties for the purposes of such negotiated sale.

(e) Department Disclosure. The Department shall cooperate with the Seller in providing such information pertaining to the Department with respect to the issuance of Bonds as may be reasonably necessary to enable the Seller to comply with its disclosure requirements under applicable securities laws.

(f) Department Continuing Disclosure. The Department shall provide to Seller upon Seller's written request certain specified information to the Seller as may be agreed to prior to the issuance of the Initial Bonds for the purpose of enabling the Seller to comply with its continuing disclosure obligations under any undertaking with the purchasers of Bonds; provided, however, that the Department's obligations hereunder shall be limited to providing to Seller such specified information upon written request and the Department shall not be required to enter into any undertaking with the purchasers of Bonds or make any filings with respect to the Bonds.

ARTICLE IV

GUARANTEES OF PERFORMANCE

Section 4.01. Availability. (a) Availability Guaranty. The Capacity Payment paid or payable in each month shall be subject to adjustment (by the Seller paying a rebate or earning a bonus, as the case may be) so as to equal the Adjusted Capacity Payment ("ACP").

Where:

If $EA > 0.97$ for the Summer Season or > 0.94 for the Winter Season

$ACP = [1 + (EA - \text{Bonus Target EA}) / \text{Bonus Target EA}] \times [\text{capacity payment paid or payable}]$.

If $EA \leq 0.97$ for the Summer Season or ≤ 0.94 for the Winter Season

$ACP = [\text{lesser of: } 1.0 \text{ and } 1 - (2 * (\text{Target EA} - EA) / \text{Target EA})] \times [\text{capacity payment paid or payable}]$.

$EA = (\text{Summation of Hourly Availability Factors for Monthly Availability Hours}) / (\# \text{ of Monthly Availability Hours in month})$

Hourly Availability Factor is determined for each Monthly Availability Hour as the quotient of (a) the capacity reflected in Seller's Availability Notice applicable for such hour, divided by (b) the Hourly Ambient Capacity for such hour.

Bonus Target EA = 0.97 for the Summer Season or 0.94 for the Winter Season.

Target EA = 0.95 for the Summer Season or 0.92 for the Winter Season.

The Summer Season is the months May through October. The Winter Season is the months November through April.

(b) Liquidated Damages. The Department may terminate this Agreement pursuant to Section 4.02(e) if the Facility has failed to meet a sixty percent (60%) EA in any two consecutive six-month periods. The provisions of this Section 4.01 and Section 4.02(e) shall be the exclusive remedies of the Department for the Seller's failure to meet the Guaranteed Availability so long as such failure is not due to intentional conduct of the Seller. In the event of intentional conduct of the Seller resulting in the non-delivery of Energy or the non-availability of Capacity as reasonably determined by the Department based on all reasonably ascertainable facts and circumstances, such an event shall be an Event of Default and the Department shall be entitled to damages set forth in Article VII. The Seller shall not use the CAISO imbalance markets to effect delivery of Energy hereunder except with respect to any underdeliveries by the Seller in the case where the Facility trips off line, in which case the Seller shall submit a schedule change as soon thereafter as reasonably practical.

Section 4.02. Termination Without Recourse. (1) Optional Termination. In addition to any other termination rights herein, a Party shall have the right, but not the obligation, to terminate the Agreement without the approval of the other Party and without recourse against the other Party for any damages or other costs and without any further obligation or liability of either Party, as follows:

(a) the Seller may terminate this Agreement at any time prior to the Commercial Operation Date upon thirty (30) days written notice if the Seller determines in its sole discretion that (i) key approvals or permits for the Facility cannot be obtained on a timely basis or that the Seller cannot otherwise meet its obligations hereunder or under the Implementation Agreement, or (ii) proceeding with the development, acquisition and

construction of the Facility will result in unacceptable risk to the Seller; provided, however, that the Department shall incur no liability to any other person as the result of any such termination.

(b) the Department may terminate this Agreement at any time prior to the Department Commitment Time (i) with respect to the competitive sale of the Initial Bonds, upon ten (10) days written notice at any time prior to the publication of the Bond Bid Documents and upon immediate notice from and after the publication of the Bond Bid Documents, (ii) with respect to the negotiated sale of the Initial Bonds, upon ten (10) days written notice at any time prior to the delivery of notice of the Bond Sale Date pursuant to Section 3.05 hereof and upon immediate notice from and after the delivery of notice of the Bond Sale Date, if the Department determines, in its sole discretion, that the cost of such Facility is or will become unacceptable. For the purposes of this subsection (b), the term "costs of the Facility" shall include both amounts payable to the Seller hereunder, including but not limited to, Sections 2.01 and 2.06 hereof, and all costs incurred by the Department in connection with the Facility.

(c) the Department may terminate this Agreement at any time upon twenty (20) days written notice if (i) Seller has not secured a site for the construction of the Facility by December 31, 2003; provided, Seller uses best efforts to secure the site as soon as reasonably practicable; or (ii) the AFC submitted by Seller for Facility is not deemed data adequate by the CEC by the earlier of (1) date the site is secured plus thirty (30) days and (2) January 31, 2004; or (iii) Seller fails to enter into EPC Contract by the earlier of (1) the date AFC submitted by Seller for the Facility is deemed data adequate by the CEC plus three hundred (300) Days, and (2) the date of the CEC final staff assessment plus thirty (30) days.

(d) a Party not claiming the Force Majeure event may terminate this Agreement upon ten (10) days written notice if a Force Majeure event continues uninterrupted for more than twelve (12) months.

(e) the Department may terminate this Agreement upon ten (10) days written notice if the Facility has failed to meet a sixty percent (60%) EA in any two consecutive six-month periods.

(f) either Party may terminate this Agreement at any time upon ten (10) days written notice if the Seller fails to enter into an Implementation Agreement in form and substance reasonably satisfactory to each Party by January 31, 2003.

(2) Automatic Termination. In addition to any other termination rights herein, this Agreement shall automatically terminate without any requirement of approval of either Party or notice and without recourse against any Party for any damages or other costs and without any further obligation or liability of either Party in the event (a) (i) the Seller, after receipt of notice from the Department pursuant to Section 3.05(d) that a competitive sale of the Initial Bonds will result in a cost of such Facility that is or will become unacceptable or is otherwise not in the best interests of the Department, advises the Department pursuant to Section 3.05(d) that it will not proceed with a negotiated sale of the Initial Bonds or fails to timely provide such notice, or (ii)

with respect to a competitive sale of the Initial Bonds, at the end of the hour 25 hours prior to the Bid Closing Time unless the Department has delivered to the Seller written notice prior thereto accepting the final pricing and other terms and provisions of the Initial Bonds published to the market for the purpose of receiving Bond Bids, (b) with respect to any negotiated sale of the Initial Bonds, (i) any of the Final Terms are changed prior to the issuance of the Initial Bonds, or (ii) the Bond Purchase Agreement is not approved or executed by any of the parties thereto, (c) the Initial Bonds are not issued for any reason after the execution of the Bond Purchase Agreement or the Bid Closing Time, or (d) the Seller does not issue the notice to proceed under the EPC Contract by the Day following the issuance of the Initial Bonds.

Section 4.03. Rated Capacity. The Department may exclude from the Rated Capacity of the Facility the amount of MW allocable to any Unit where the Rated Capacity of such Unit is less than forty (40) MW, provided, however, that the Seller may re-run the performance test two times, within one-hundred-twenty (120) Days following the Commercial Operation Date, to attempt to achieve a Rated Capacity of any such Unit in excess of forty (40) MW. The provisions of this Section 4.03 and Section 2.02 shall be the exclusive remedy of the Department for any Unit's failure to achieve a specific Rated Capacity.

Section 4.04. Liquidated Damages. The Parties agree that the Department's actual damages in the event Facility fails to achieve a particular availability or rated capacity would be extremely difficult or impracticable to determine and that, after negotiation, the Parties have agreed that the liquidated amounts set forth in Sections 4.01, 4.02 and 4.03 are a reasonable estimate of the damages that the Department would incur as a result of such failures and delays.

Section 4.05. Exclusive Remedies for Shortfalls and Delays. Notwithstanding Article VII or any other provision of this Agreement, and assuming no intentional breach by the Seller hereunder, the provisions of Section 4.01, 4.02(e) and 4.03 shall provide the Department's exclusive remedy in the event the Seller fails to schedule, deliver or provide all or part of the Rated Capacity or Energy or if the Facility fails to achieve a particular Rated Capacity or Guaranteed Availability. Failure to pay any amounts due under the provisions of Section 4.01 shall, however, constitute a separate and distinct Event of Default to which Article VII shall apply.

ARTICLE V PAYMENTS

Section 5.01. Billing Period; Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 5.02. Timing of Payments. All payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the twentieth (20th) Day of the Invoice Month or by tenth (10th) Day after receipt of the bill, whichever is later. Payment shall be made by electronic funds transfer, or by other mutually agreeable method, to the account designated by the Seller and set forth in Appendix A. If the due date falls on a non-Business Day, then the payment shall be due on the next following Business Day.

Section 5.03. Late Payments. Amounts not paid on or before the due date, including without limitation amounts due and not paid under Article VII, shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(b) not to exceed 15%.

Section 5.04. Disputes.

(a) Generally. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate provided in Section 5.03 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 5.03 from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.04 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

(b) Fuel Related Disputes. Notwithstanding Section 5.05(b), if a monthly invoice for Fuel is in dispute, the Seller shall provide the Department immediate and routine access to relevant third-party transportation and storage information without application of formal audit conditions.

Section 5.05. Records Retention and Audit.

(a) Records Retention.

(i) Generally. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after the date of receipt of final payment under this Agreement. Within three (3) years from the date of receipt of final payment under this Agreement, either Party may request in writing copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(ii) Maintenance Schedule. The Seller shall maintain records of unit-by-unit maintenance schedules for one year following the year in which the maintenance was conducted.

(iii) Fuel Documentation. At the Department's request, the Seller will provide the Department, in a timely manner, with such information regarding Fuel costs as the Department may reasonably request, including without limitation, natural gas confirmations after the Department's Dispatch requests and reporting and tracking of gas volumes.

(b) Audit. The Seller agrees that the Department, The Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to sales of Rated Capacity or Energy by the Seller to the Department pursuant to this Agreement. The Seller agrees to maintain such records for possible audit for a minimum of three (3) years after the final payment under this Agreement. The Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Seller agrees to include similar right of the State to audit records and interview staff in any material contract with contractors or suppliers related to performance of this Agreement.

ARTICLE VI FORCE MAJEURE

Section 6.01. Force Majeure.

(a) No Breach for Force Majeure. No Party shall be liable for or considered to be in breach of this Agreement to the extent that a failure to perform its obligations (other than an obligation to pay money) under this Agreement shall be due to a Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations hereunder and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations hereunder (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch.

(b) Payment During Force Majeure. The Department's obligation to pay the Capacity Payment will not be excused on account of an event of Force Majeure to the extent that the Seller is capable of providing the Rated Capacity or Energy. If the Seller is unable to provide all or part of the Rated Capacity and Energy as a result of a Force Majeure, the Department shall pay the Capacity Payment only to the extent that the Seller is providing the Rated Capacity and Energy on a pro-rata basis.

(c) Termination for Force Majeure. If an event of Force Majeure continues uninterrupted for more than twelve (12) months, the Party not claiming the Force Majeure event may terminate this Agreement pursuant to Section 4.02(d).

ARTICLE VII DEFAULT AND EARLY TERMINATION

Section 7.01. Events of Default. An “Event of Default” shall mean with respect to a party (“Defaulting Party”):

(a) if default shall be made in the due and punctual payment of the Purchase Price when and as the same shall become due and payable, and such default shall continue for a period of 10 days after written notice thereof by the other party (the “Non-Defaulting Party”) to the Defaulting Party;

(b) if default shall be made by the Defaulting Party in the performance or observance on its part of any other of the covenants or agreements contained in this Agreement to be performed, other than as specified in clause (1) above, and such default shall continue for a period of 60 days after written notice thereof to the Defaulting Party by the Non-Defaulting Party; provided, however, that if such default shall be such that it cannot be remedied by the Defaulting Party within such 60 day period, it shall not constitute an Event of Default if corrective action is instituted by the Defaulting Party within such period and diligently pursued by the Defaulting Party until the default is remedied;

(c) default under the Implementation Agreement or a Management Agreement.

Section 7.02. Remedies for Events of Default. If an Event of Default occurs and is continuing, the Non-Defaulting Party may exercise any remedies available to it at law, in equity, by statute or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party or mandamus to compel performance of obligations hereunder.

Section 7.03. Remedies not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Non-Defaulting Party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

Section 7.04. Effect of Waiver and Other Circumstances. No delay or omission of the Non-Defaulting Party to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein and every power and remedy given by this Article to the Non-Defaulting Party may be exercised from time to time and as often as may be deemed expedient by the Non-Defaulting Party. A Non-Defaulting Party may waive any past default hereunder and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE VIII MISCELLANEOUS

Section 8.01. Title, Risk of Loss. The Seller warrants that it will deliver the Energy to the Department free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FROM AND AFTER THE DELIVERY POINT.** Risk of loss of the Energy shall pass from the Seller to the Department at the Delivery Point.

Section 8.02. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State, without regard to the conflicts of laws rules thereof.

Section 8.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the State of California.

Section 8.04. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller. In the event that changes in Laws, regulations or practices, including changes in procedures governing sales into the State's wholesale power markets, materially alter the procedures applicable to Parties' performance of their respective obligations hereunder, the Parties will endeavor in good faith to negotiate appropriate and mutually agreeable amendments to this Agreement or separate protocols to reflect such changes.

Section 8.05. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 8.06. Taxes. The Purchase Price, as defined herein, shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Rated Capacity and Energy that arise prior to the Delivery Point; If the Department is required to remit any tax for which the Seller is responsible under this Section 8.06, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Rated Capacity and Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Rated Capacity and Energy.

Section 8.07. Limitations of Liability, Remedies and Damages. Each Party acknowledges and agrees that in no event shall any officer, member of its governing bodies, employee, or affiliate of either Party be liable to any other person or Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party, or for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder, and the sole recourse for performance of the obligations under this Agreement shall be against Seller and or against the Department and the Trust Estate, and not against any other person, except for such liability as expressly assumed by an assignee or guarantor pursuant to an assignment of this Agreement.

Section 8.08. Transfer of Interest in Agreement. General Requirement. No Party shall voluntarily assign or transfer this Agreement or any portion thereof, nor any of the obligations or rights hereunder, without the prior written consent and approval of the other Party, which consent shall not be unreasonably withheld or delayed.

Section 8.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 8.10. Relationship of the Parties.

(a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 8.11. No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

Section 8.12. Third Party Beneficiaries. This Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Section 8.13. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 8.14. Notices. All formal notice, demand or request provided for in this Agreement shall be made in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the Parties to the addresses set forth in Appendix A. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses or add additional noticed Parties by providing notice of same in accordance herewith.

Section 8.15. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise.

Section 8.16. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 8.17. Further Assurances. Each Party agrees to execute and deliver such other instruments and documents and to take such other actions as may be reasonably necessary to complete performance hereunder and otherwise to further the purposes and intent of this Agreement.

Section 8.18. Application of Government Code and the Public Contracts Code. Pursuant to Section 80014(b) of the Water Code, the Department hereby determines that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 30th day of December, 2002.

STATE OF CALIFORNIA DEPARTMENT OF
WATER RESOURCES, separate and apart from its
powers and responsibilities with respect to the State
Water Resources Development System

By: _____
Name:
Title:

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Name:
Title:

Addresses**Seller**

<u>All Notices:</u> San Francisco Public Utilities Commission <u>Street:</u> 1155 Market Street, Fourth Floor <u>City, State, Zip:</u> San Francisco, CA 94102 Phone: (415) 554-3160 Facsimile: (415) 554-3161 Federal Tax ID No. <u>Billing Address:</u> 1155 Market Street, Fourth Floor San Francisco, CA 94102 Phone: (415) 554-3160 Facsimile: (415) 554-3161 <u>Notice Address:</u> 1155 Market Street, Fourth Floor San Francisco, CA 94102 Phone: (415) 554-3160 Facsimile: (415) 554-3161 <u>Authorized Representatives:</u> Patricia E. Martel, General Manager	<u>All Notices:</u> San Francisco City Attorney's Office <u>Street:</u> City Hall, Room 234 1 Dr. Carlton B. Goodlett Place <u>City, State, Zip:</u> San Francisco, CA 94102 Phone: (415) 554-4615 Facsimile: (415) 554-4763 Federal Tax ID No. <u>Billing Address:</u> City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Phone: (415) 554-4615 Facsimile: (415) 554-4763 <u>Notice Address:</u> City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Phone: (415) 554-4615 Facsimile: (415) 554-4763 <u>Authorized Representatives:</u> Randolph Wu, Deputy City Attorney
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Department

All Notices:
California Department of Water Resources/CERS

Street:
3310 El Camino Avenue, Suite 120

City, State, Zip:
Sacramento, Calif. 95821

Attn: Executive Manager Power Systems
Phone: (916) 574-0339
Facsimile: (916) 574-2152
Duns: _____
Federal Tax ID No.

Billing Address:

Department of Water Resources/CERS
Attn: Doreen Singh
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-0309
Facsimile: (916) 574-1239

Notice Address:

Department of Water Resources/CERS
Attn: Contracts Payable
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-2733
Facsimile: (916) 574-2512

Authorized Representative:

Pete Garriss – Deputy Director
Wire Transfer Details:

ABA
Account No.

Scheduling:

Attn: Chief Power Dispatcher
Phone: (916) 574-0161
Facsimile: (916) 574-2569

Payments:

Attn: Cash Receipts Section
Phone: (916) 653-6892
Facsimile: (916) 654-9882

Major Milestones

<u>Milestone</u>	<u>Target Date</u>
Obtain Site Control	12/31/2003
AFC Deemed Data Adequate by CEC	1/31/2004
Obtain Permits – Land	1/31/2005
Obtain Permits – Air	1/31/2005
Gas Interconnection Studies Completed by PG&E	1/31/2004
Electric Interconnection Studies Completed by PG&E	1/31/2004
EPC Contract Executed	12/1/2004
Start of Construction	12/31/2004
Completion of Gas Interconnection	5/1/2005
Completion of Electric Interconnection	5/1/2005
Management Agreement Executed	12/1/2004
Commercial Operation Date	6/1/2005

**PERFORMANCE TESTING PROCEDURES
FOR COMMERCIAL OPERATIONS**

1. Purpose of the Performance Test.

Upon achieving Commercial Operation, the Seller shall perform a Performance Test in accordance with this Appendix C to determine the Rated Capacity as described in Section 2.03 of this Agreement. Periodically throughout the Term of this Agreement, the Seller will perform additional performance tests. The purpose of this Appendix C is to provide the guidelines under which these performance tests will be conducted.

2. Test Procedure and Schedule.

The Seller shall prepare and submit its written, proposed test procedure and schedule to Department no less than fourteen (14) business days before the proposed test date for Department's acceptance and, within ten (10) business days of such submittal, Department and the Seller shall meet to review and discuss the proposed test procedure and schedule. For Performance Tests other than the initial test, Department and the Seller may waive such meeting by mutual agreement.

Within five (5) business days of such meeting or waiver thereof, Department shall submit either its written acceptance or comments, including the reasons for such comments, on the proposed test procedure and schedule to the Seller. The failure by Department to submit such written acceptance or comment within the required time shall constitute acceptance of the proposed test procedure and schedule by Department. Other than this deemed approval by the Department, the parties shall mutually agree on the final test procedure that shall be the approved test procedure.

The Seller shall provide written notice to Department of changes, if any, to the approved test procedure and schedule and the reason(s) therefore as soon as reasonably practicable, such changes being subject to Department's approval.

The proposed and approved test procedures shall comply with the requirements of Section 3 of the Performance Test Code ASME PTC 22-1997 for Gas Turbine Power Plants ("PTC 22").

3. Scheduling of the Initial and Annual Performance Tests.

Upon achieving Commercial Operation, the Seller shall give the Department five business days notice before the commencement of the performance test. A capacity and heat rate test of each Unit shall be performed. This performance test shall be paid for by the Seller.

Annually in accordance with Section 4.02 (b), a heat rate test shall be performed within thirty days before or after the anniversary of the Commercial Operation Date, or at another time to be mutually agreed. The Seller shall provide 10 business day notice to the Department before the commencement of this performance test. This performance test shall be paid for by the Seller.

Periodically in accordance with Section 2.02 (c), the Department may call for additional performance tests in addition to the required annual test for the determination of Rated Capacity. The incremental costs of this test shall be born by the Department. The Seller shall give the Department 10 business days notice before the commencement of the performance test.

4. Test Conditions.

- A. Start-Up and Stabilization Period.** Prior to the start of the test, the Facility shall be started, synchronized and brought to full load using normal start procedures and then operated continuously at full load for as long as it is necessary, but in no case for no less than one hour, for all measured parameters to achieve stable, normal conditions such that any variations in such parameters will be within the tolerances provided in Table 3.3.3 of PTC 22.
- B. Operating Personnel.** The Facility shall be operated by Seller's operating personnel .
- C. Duration.** The duration of the test shall be four continuous (4) hours, which shall commence only upon satisfactory completion of the Start-Up and Stabilization Period.
- D. Operating Procedures and Conditions.** At all times, the Facility shall be operated in compliance with the approved test procedure, Prudent Industry Practice and all operating procedures recommended, required or established by (i) the manufacturer or supplier of the Facility's equipment (ii) the firm(s) that engineered and designed the Facility and (iii) the contractor(s) that constructed the Facility.

At no time during the test shall the Facility be subject to disruptions or abnormal conditions including, but not limited to, any (i) unstable conditions, (ii) equipment, operating, or regulatory restrictions, or (iii) changes in load from full load other than those fluctuations naturally arising from variations in ambient temperature.

- E. Applicable Laws and Permits.** At all times, the Facility shall be in compliance with all applicable laws, regulations and permits, including, but not limited to, those governing safety and air and water emissions.
- F. Data Collection.** At a minimum, the following parameters will be measured and recorded simultaneously at no greater than fifteen minute intervals except for fuel samples:
1. **Instantaneous ambient relative humidity (%)**
 2. **Instantaneous ambient barometric pressure (inches Hg)**
 3. **Instantaneous ambient temperature (°F)**
 4. **Net output since last measurement at the Energy Delivery Point (kWh)**
 5. **CEMS data required per air permit**
 6. **Turbine speed (rpm)**
 7. **Turbine temperatures (°F)**
 8. **Turbine pressures (psig)**
 9. **Fuel flow at the utility meter.**
 10. **fuel samples once per hour to be tested by an independent laboratory.**

Upon mutual agreement of the Parties, additional parameters may be measured and recorded simultaneously with the required parameters.

- G. Instrumentation and Metering.** The Seller shall provide all instrumentation, metering and data collection equipment required to perform the test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Facility achieves Commercial Operation for monitoring and controlling the operation of the Facility and collecting the data required for the Seller to prepare and submit its monthly invoice to Department shall be used for the test. The Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3) months prior to the date of the test. All electrical metering equipment shall utilize the plant's installed CAISO metering equipment calibrated to CAISO standards.

5. Determination of Rated Capacity and Creation of Ambient Facility Output Table.

The Seller shall perform the calculation of Rated Capacity correcting the measured data to the following adjustments:

The net output for each data interval shall be adjusted to Contract Conditions by first adjusting for differences, if any, between the ambient relative humidity for that data interval and Contract Conditions using the performance curves provided by the manufacturer then adjusting that result for differences, if any, between the ambient barometric pressure for that data interval and Contract Conditions using the performance

curves provided by the manufacturer, and, finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the manufacturer's performance curve .

Using the resulting net output data from this sequential, three-step adjustment process, the net kW output at Contract Conditions at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the test. The average of the sixteen average net kW values thus calculated shall be the Rated Capacity.

Using the manufacturer's performance curve, the Rated Capacity as calculated above for the Facility, comprising those Units meeting the requirements of Section 4.03, shall be used to generate an "Ambient Facility Output Table" relating expected Facility output (in MW) to ambient temperature, such that the Rated Capacity of the Facility shall be the expected Facility output at Contract Conditions in the Ambient Facility Output Table, and the expected Facility output at other ambient temperatures shall relate to Rated Capacity in the same proportion as the points on the manufacturer's performance curve relate to that curve at Contract Conditions.

6. **Test Reports.** Within five (5) business days after the completion of the performance test, the Seller shall prepare and submit to Department a written report of the test in accordance with Section 6 of PTC 22. At a minimum, the report shall include (i) the approved test procedure, (ii) a record of the personnel present for the test whether serving in an operating, testing, monitoring or other such participatory role, (iii) documentation of the satisfactory completion of the start-up and stabilization period, (iv) a record of any unusual or abnormal conditions or events that occurred during the test and any actions taken in response thereto, (v) the measured data, (vi) a verification of the validity of the test in accordance with Section 3.5.1 of PTC 22, (vii) the adjusted data with supporting calculations, (viii) Rated Capacity with supporting calculations, and (ix) the Seller's statement of either the Seller's acceptance of the test or the Seller's rejection of the test and reason(s) therefore. Within five (5) business days after receipt of such report, Department shall notify the Seller in writing of either Department's acceptance of the test or Department's rejection of the test and reason(s) therefore.

7. **Test Acceptance and Re-Testing.**

If the Seller and Department both accept a test, the Rated Capacity shall be updated to reflect the results of such test effective upon the first day of the month following the month in which Department receives the Seller's test report.

If the Seller is unable to complete a test for any reason, it shall be permitted to reconduct such test.

8. Cost and Revenue.

For all tests prior to Commercial Operation, the Energy produced by the Seller shall be scheduled by the Seller into the CAISO controlled grid and the Seller shall bear all costs for such tests and receive all revenues from the sale of such Energy.

For all tests after Commercial Operation, the Seller and the Department shall use commercially reasonable efforts to schedule such tests during periods in which Department has Dispatched the Facility to operate. If unable to be so dispatched, then the Energy produced by the Seller shall be scheduled by the Seller into the CAISO controlled grid and the Seller shall bear all costs for such test (other than Fuel costs) and receive all revenues from the sale of such Energy and the hours of operation during such test shall not be counted towards the annual limits on operating hours that Department may Dispatch. In the event that the Department is unable to dispatch the Facility during a performance test the Department requested under Section 2.03, then the Department shall pay for fuel costs in excess of plant revenue during the period of the Performance Test including the start up period relevant to such test.

EXECUTION COPY

IMPLEMENTATION AGREEMENT

This IMPLEMENTATION AGREEMENT (the "Agreement"), dated as of January 23, 2003 by and among the ATTORNEY GENERAL OF THE STATE OF CALIFORNIA (the "Attorney General"), the CITY AND COUNTY OF SAN FRANCISCO (the "City"), the CALIFORNIA CONSUMER POWER AND CONSERVATION FINANCING AUTHORITY (the "Authority"), and the DEPARTMENT OF WATER RESOURCES with respect to its responsibilities pursuant to the Department Act (as hereinafter defined) regarding the Fund (as hereinafter defined) separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (in such capacity, the "Department") (each individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Governor of the State of California, acting on behalf of the agencies, departments, subdivisions, boards, and commissions of the executive branch of the State of California, including without limitation the California Department of Water Resources; the California Electricity Oversight Board; the California Public Utilities Commission; the People of the State of California, by and through the Attorney General; The Williams Companies, Inc.; and Williams Energy Marketing & Trading Company and other named parties including the City entered into a Settlement Agreement as of November 11, 2002 (the "Settlement Agreement"),

WHEREAS, the Settlement Agreement, among other things, transferred and assigned to the Attorney General six (6) LM 6000 Gas Turbine Generator Sets and all related rights thereto;

WHEREAS, certain payments have been or will be made to the Attorney General pursuant to the Settlement Agreement;

WHEREAS, the Attorney General has agreed to transfer four LM 6000 Gas Turbine Generator sets and related rights to the City for the purpose of developing, acquiring, constructing and operating a generating facility in the City;

WHEREAS, the Attorney General has agreed to advance certain moneys in escrow for the development of such facility;

WHEREAS, the Department and the City have entered into the Power Purchase Agreement;

WHEREAS, the Power Purchase Agreement provides that either party may terminate the Power Purchase Agreement at any time upon ten (10) days written notice if the City fails to enter

into an Implementation Agreement (as defined therein) satisfactory to the Department by January 31, 2003;

WHEREAS, the Authority will assist the City in the application for and procurement of all state licenses, permits and approvals necessary for the construction and operation of such facility and may assist the City in other development activities, including but not limited to the California Energy Commission's Application for Certification ("AFC") which is inclusive of local, regional, state, and federal laws ordinances regulations and standards; and other support to assist the City in the development, negotiations, and approval of the Facility Agreements;

WHEREAS, the Parties wish to set forth herein the undertakings of the Parties with respect to the matters set forth above,

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless otherwise defined herein or in any appendix hereto, the following terms shall have the respective meanings in this Agreement:

"Assets" means four (4) LM 6000 Gas Turbine Generator Sets described as Units Nos. 7, 8, 9 and 10 in the GE Agreement and all rights with respect thereto under the GE Agreement relating thereto.

"Authority Option Date" means December 31, 2003 or as such date may be extended in six month increments on approval in the sole discretion of the Attorney General for good cause.

"Bill of Sale" means, collectively, the Bill of Sale, Assignment and Assumption Agreement(s) providing for transfer and assignment of the Assets to the City or its designee(s) in the form attached as Schedule 3.2(b) to the Settlement Agreement.

"City Shortfall Amount" means any amounts expended by the City in excess of the Escrow Amount.

"Closing Date" means the date selected by the Attorney General as the closing date in January, 2003.

"Department Commitment Time" shall have the meaning set forth in the Power Purchase Agreement.

"Environmental Audit" means a Phase One environmental site assessment (the scope and performance of which meets or exceeds ASTM Standard Practice E1527-93 Standard Practice

for Environmental Site Assessments: Phase One Environmental Site Assessment Process) of the Facility.

“EPC Contract” means a contract with a creditworthy contractor for the engineering, procurement and construction of the Facility at a fixed price in form and substance reasonably satisfactory to the Department.

“Escrow Agent” means the escrow agent or any successor thereto under the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreements between the Escrow Agent and the City in the form attached hereto as Exhibit 1 hereto.

“Escrow Account” means the Escrow Account established under the Escrow Agreement and held and administered by the Escrow Agent.

“Facility” means an electric generation facility including the Assets to be located in or near the City and/or the San Francisco International Airport with all other property, structures, equipment necessary for the generation and transmission of power to the Department in accordance with the Power Purchase Agreement.

“Facility Agreements” means this Agreement, the Power Purchase Agreement, the EPC Contract, the Management Agreement(s), the Bill of Sale and the Escrow Agreement.

“Facility Cost” shall have the meaning set forth in the Power Purchase Agreement.

“GE Agreement” means that certain Agreement between State Street Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee, and GE Packaged Power, Inc. for six LM6000 Turbine Generator Sets, dated October 18, 2001, as amended on April 16, 2002 in respect of storage of the Units, and on October 22, 2002 to extend the warranties set forth therein.

“Initial Bonds” shall have the meaning set forth in the Power Purchase Agreement.

“KRCD Implementation Agreement” means the Implementation Agreement, dated as of December 31, 2002, by and among the Attorney General, the Kings River Conservation District, the Authority and Department.

“Management Agreement” means any agreement(s) in form and substance reasonably satisfactory to the Department, pursuant to which one or more creditworthy entities agrees to (a) operate and maintain the Facility on behalf of City, (b) provide fuel procurement and management, major maintenance, transmission, scheduling, dispatch and other services on behalf of City with respect to the Facility.

“Power Purchase Agreement” means the Power Purchase Agreement, entered into December 30, 2002, between the Department and the City.

“Unit” means any one of the LM 6000 Gas Turbine Generator Sets described in the GE Agreement.

ARTICLE II

UNDERTAKINGS OF THE PARTIES

Section 2.01 Undertakings. The Parties hereto each agree to enter into such agreements and perform such obligations as set forth herein, subject to such limitations as set forth herein.

Section 2.02. Transfer of Assets. (a) The Attorney General hereby agrees to the transfer, under the terms and conditions set forth in this Agreement, of all right, title and interest of Williams Energy Marketing & Trading Company in the Assets to the City as its designee under the Settlement Agreement, including all rights under the GE Agreement allocable to the Assets, and hereby authorizes the City, and shall cause Williams Energy Marketing & Trading Company, to enter into the Bill of Sale. Upon the execution and delivery of the Bill of Sale by Williams Energy Marketing & Trading Company and the City, the Attorney General shall have, and shall assert, no further interest in or claim on the Assets, except as may be set forth in this Agreement. The Attorney General agrees not to waive the execution and delivery of any consents required by Paragraph 3.2(b)(iv) of the Settlement Agreement.

(b) Subject to the Authority’s option referred to in Section 4.01 hereof, the City shall be entitled to pledge or mortgage the Facility, including the Assets, in connection with the financing thereof and may exercise any and all rights with respect to the Assets as owner thereof.

Section 2.03. Deposit of Funds; Escrow Agreement. (a) The City shall enter into the Escrow Agreement on the Closing Date. To the extent received by the Attorney General under the Settlement Agreement, the Attorney General shall make deposits to the Escrow Agreement in the following amounts as soon as practicable after the receipt date for such amount as set forth below:

<u>Receipt Date</u>	<u>Amount</u>
Closing Date	\$2,666,667
January 1, 2004	\$2,666,667
January 1, 2005	\$2,266,667
January 1, 2007	\$1,666,667
January 1, 2008	\$1,333,333
January 1, 2009	\$1,333,333
January 1, 2010	\$1,333,333

In the event that the Authority does not exercise its option to purchase pursuant to Section 4.01 of the KRCD Implementation Agreement, the Attorney General shall also make deposits of any remaining amounts allocated for the development of a power generating facility by the Kings River Conservation District (“KRCD”) that are not used and will not be needed for the development of the KRCD facility.

(b) The Attorney General shall be obligated to deposit such amounts only to the extent necessary to fund development (and not construction) of the Facility. To the extent amounts received pursuant to the Settlement Agreement on any particular receipt date are not sufficient to make all of the applications set forth on Schedule 4.7(d) of the Settlement Agreement for a particular payment, the Attorney General shall allocate amounts actually received on such receipt date among the applications set forth on Schedule 4.7(d) of the Settlement Agreement on a ratable basis.

(c) The City acknowledges and agrees that it shall seek monies from the Escrow Fund only for those purposes which are reasonable and necessary for the development (and not the construction) of the Facility.

Section 2.04 Development Budget. (a) The City and the Authority have reviewed and approved a Development Budget for development of the Facility ("Development Budget"). The Development Budget is based upon Key Milestones attached as Schedule A. The City and Authority may approve the revision of levels of expenditure within categories of the Development Budget as deemed necessary from time to time to achieve the objective of meeting specific Key Milestones. The City may submit requisitions to the Escrow Agent for reimbursement for the estimated development costs in the Development Budget attached as Schedule B as long as such payments are reasonable and necessary to meet the Key Milestones or good cause is shown by the City as to why a particular milestone schedule has been updated or could not be met. The Development Budget includes but is not limited to the estimated costs of obtaining site control, preparing all regulatory applications and proceeding through the regulatory process, negotiating electric and gas interconnection agreements, selecting EPC and O&M contractors and negotiating the EPC Contract and the Management Agreement, selection of a fuel supplier and scheduling coordinator and the negotiation of fuel supply agreements and the schedule coordinating agreement, costs associated with financing of the Facility such as the preparation of key project documents and the negotiation of credit agreements.

(b) On or before November of each year, the City and the Authority shall review the annual budget for the subsequent year. In addition, the City and the Authority will meet periodically to review the Development Budget against actual experience or upon the occurrence of a significant event and may revise the Development Budget as needed.

(c) The Department currently expects that its reasonable fees and expenses to be incurred in negotiating, preparing and implementing the Facility Agreements will be approximately \$125,000 per year for a two year development period. The Department also shall be reimbursed from the Escrow Account for reasonable fees and expenses incurred prior to January 1, 2003 in negotiating, preparing and implementing the Facility Agreements in the amount of \$100,000. All amounts referred to in this subsection (c) shall be deemed part of the Development Budget. The Authority and the City also shall be reimbursed from the Escrow Account for reasonable fees and expenses incurred prior to January 1, 2003 upon the submission of a statement in reasonable detail.

(d) The City, the Authority and the Department shall be entitled to reimbursement for all other reasonable, verifiable costs of developing the Facility which are either not included or are in excess of budgeted amounts set forth in the Development Budget from amounts remaining in

the Escrow Account after either (i) completion of development of the Facility, (ii) the City decides not to develop the Facility pursuant to Section 3.01(b) hereof, or (iii) sale of the Assets pursuant to Section 4.02 hereof.

ARTICLE III

DEVELOPMENT OF FACILITIES

Section 3.01. Development of the Facility. (a) Subject to the limitations set forth in the Facility Agreements, the City will use its best efforts to develop, acquire, construct, finance and operate the Facility at the lowest possible cost consistent with other objectives. The City will use its best efforts to meet the milestone schedule set forth in the Power Purchase Agreement.

(b) The City may, in its sole discretion, determine that (i) key approvals or permits for the Facility cannot be obtained on a timely basis or that the City cannot otherwise meet its obligations hereunder or under the Power Purchase Agreement, or (ii) proceeding with the development, acquisition and construction of the Facility will result in unacceptable risk to the City. In such case if the City decides not to develop the Facility, then the City shall exercise its option to terminate the Power Purchase Agreement pursuant to Section 4.02(a) thereof.

Section 3.02. Site; Title Report. City will use its best efforts to identify and control a site(s) at or near the City or at the San Francisco International Airport for the location of the Facility either through the optioning of a site or an equivalent governmental memorandum of understanding, acquisition of a site, or the leasing thereof, for a term sufficient to comply with the provisions of the Facility Agreements. Prior to the Department Commitment Time, the City will obtain a [leasehold] title report (together with municipal searches) from a title insurance company reasonably acceptable to the Department with respect to the City's [leasehold] interest in the site.

Section 3.03. Environmental Audit. Prior to acquiring the site pursuant to Section 3.02 hereof, the City will obtain an Environmental Audit reasonably acceptable to the Department.

Section 3.04. Storage of Assets. The City will arrange for the storage of the Assets in a manner that preserves their value and utility in accordance with manufacturer warranty requirements until such Assets are either incorporated into the Facility or sold in accordance with the provisions of this Agreement. The City will arrange for the insurance of the Assets during any shipment, storage, Facility construction and operation periods having terms and provisions reasonable acceptable to the Attorney General, the Authority and the Department. The City will not grant or permit to be imposed on the Assets any lien or other encumbrance prior to the time the Assets are either incorporated into the Facility or sold in accordance with the provisions of this Agreement.

Section 3.05. Permits and Approvals. The City shall use its best efforts to obtain all permits and governmental approvals necessary for the acquisition of the Facility site, and the acquisition, construction and operation of the Facility and to meet its obligations under the

Facility Agreements. The City shall, or the Authority on behalf of the City may, submit an application for certification (“AFC”) for the Facility to the California Energy Commission (“CEC”), and in coordination with the City’s acquisition of the Facility site the City shall, or the Authority on behalf of the City may, expeditiously provide all required data so that the AFC can be deemed data adequate by the CEC, as soon as reasonably practicable.

Section 3.06. Management Agreement(s). The City shall use its best efforts to enter into one or more Management Agreement(s). The City and the Authority may determine that the Authority should assist and support the City in the preparation, selection, negotiation, and execution of the Management Agreement.

Section 3.07. EPC Contract. The City shall use its best efforts to enter into an EPC Contract. The City and the Authority may determine that the Authority should assist and support the City in the preparation, selection, negotiation, and execution of the EPC Contract.

Section 3.08. Financing of the Facility. The City shall use its best efforts to issue the Initial Bonds to finance the Facility Cost.

ARTICLE IV

OPTIONS; SALE OF ASSETS

Section 4.01. Authority Purchase Option. (a) In the event that the (i) City has not secured a site for the construction of the Facility by the Authority Option Date, (ii) the Attorney General determines that the City has ceased development of the Facility, or (iii) the City decides not to develop the Facility pursuant to Section 3.01(b) hereof, the Authority shall have the right but not the obligation to purchase any or all Units from City at a price of \$2,500,000 per Unit and terminate this Agreement.

(b) The Authority shall determine whether it intends to exercise its option within thirty (30) days of the occurrence of an event referred to in Section 4.01(a)(i), (ii) or (iii) hereof by written notice to the City of the Authority's intent to exercise its option and shall purchase such Unit(s) in a time period not greater than 120 days from such notice. The Authority shall pay such purchase price upon exercise of its option. Upon the exercise of such option by the Authority and payment of the purchase price to the City, title to the Assets, together with all other transferable rights and property financed with moneys on deposit in the Escrow Account under the Escrow Agreement, shall automatically vest in the Authority. In the event of such termination, the City shall, upon request of the Authority, deliver or cause to be delivered to the Authority such documentation as may be necessary to evidence the City’s transfer of its interest in the Assets and such other rights and property. Upon the exercise of the Authority’s option to and payment of the purchase price to the City all rights and interests of the City and remaining proceeds of the Escrow Account shall automatically vest in the Authority; provided, however, that in addition to the payment of the purchase price by the Authority for the purchase of the Unit(s) in accordance with this Section 4.01(b), the City shall be entitled to reimbursement from amounts then on deposit in or thereafter deposited to the Escrow Account of any and all unreimbursed costs of developing the Facility incurred by the City in accordance with the Development Budget.

Section 4.02. Sale of Assets. (a) In the event the (i) (A) City has not secured a site for the construction of the Facility by the Authority Option Date, (B) the Attorney General determines that the City has ceased development of the Facility, or (C) the City decides not to develop the Facility pursuant to Section 3.01(b) hereof, and (ii) the Authority does not elect to exercise its option pursuant to Section 4.01 hereof, the City shall promptly sell such Unit(s) by means of a public bidding process. The City shall be entitled to retain (a) the first \$2,500,000 from the sale of a Unit, plus 5% of any amount in excess of \$2,500,000 and (b) any City Shortfall Amount included in the Development Budget, with any remaining proceeds being deposited in the Electric Power Fund.

(b) This Agreement shall terminate upon the sale of the Assets pursuant to subsection (a). Any proceeds of such sale received by the City shall be the City's exclusive remedy for the City's inability to develop, finance and complete the Facility for any reason. The City shall not have recourse against the Attorney General, the Authority or the Department for any costs in connection with the Facility and the Authority and the Department shall incur no liability to any other person as the result of any termination or abandonment of the Facility by the City.

ARTICLE V

OBLIGATIONS OF CITY AND AUTHORITY

Section 5.01. City's Obligations; No Debt of City; Authority Obligations. (a) City's execution of this Agreement and its obligations hereunder shall not constitute a debt or liability of the City. The execution of this Agreement shall not directly, indirectly or contingently obligate the City to levy or pledge any form of taxation or make any appropriation for the payment of any amounts under this Agreement. The City shall not be obligated to meet its development obligations as described in Section 3 hereof from any funds other than moneys made available to the City for development purposes under the Escrow Agreement.

(b) The Authority shall not be obligated to meet its development obligations as described in Section 3 hereof or any other matter associated with agreement without limitation from any funds other than moneys made available to the Authority for development purposes under the Escrow Agreement.

Section 5.02. City may Delegate to Agents. The City may delegate its obligations under the Facility Agreements to agents acting on its behalf.

ARTICLE VI
REPRESENTATIONS

Section 6.01 Representations. Each Party hereto makes the following representations and warranties:

(a) The Party has the power and authority to execute, deliver and perform this Agreement and its obligations hereunder.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Party herein contemplated have been duly authorized by all requisite action on the part of the Party and will not violate any provision of law, any order of any court or agency of government, or the charter of the Party, or any indenture, agreement or other instrument to which the Party is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever.

(c) This Agreement constitutes the legal, valid and binding obligation of the Party enforceable against the Party in accordance with its terms.

(d) There is no action or proceeding pending or, to the best knowledge of the Party, threatened by or against the Party by or before any court or administrative agency that might adversely affect the ability of the Party to perform its obligations under this Agreement and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Party as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Party hereunder have been obtained.

ARTICLE VII
EVENTS OF DEFAULT

Section 7.01. Events of Default. An “Event of Default” shall exist mean with respect to a party (“Defaulting Party”) if:

(a) default shall be made by the Defaulting Party in the performance or observance on its part of any of the agreements or obligations contained in this Agreement and such default shall continue for a period of 30 days after written notice thereof to the Defaulting Party by the Non-Defaulting Party.

(b) Any material representation or warranty made by or on behalf of a Party herein shall prove to be false, misleading or incorrect in any material respect as of the date made.

Section 7.02. Remedies for Events of Default. (a) If an Event of Default occurs and is continuing, a Non-Defaulting Party may exercise any remedies available to it at law, in equity, by statute or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party or mandamus to compel performance of obligations hereunder.

(b) In addition to any remedies available under subsection (a), upon an Event of Default by the City the Attorney General may repossess the Assets and/or terminate the City's rights to make requisitions from and take possession of the Escrow Account. In the event the Attorney General elects to repossess the Assets, title to the Assets shall automatically vest in the Attorney General and the City shall, upon request of the Attorney General, deliver or cause to be delivered to the Authority such documentation as may be necessary to evidence the City's transfer of its interest in the Assets.

Section 7.03. Remedies not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Non-Defaulting Party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

Section 7.04. Effect of Waiver and Other Circumstances. No delay or omission of the Non-Defaulting Party to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein and every power and remedy given by this Article to the Non-Defaulting Party may be exercised from time to time and as often as may be deemed expedient by the Non-Defaulting Party. A Non-Defaulting Party may waive any past default hereunder and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of California, without regard to the conflicts of laws rules thereof.

Section 8.02. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Parties.

Section 8.03. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement

without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 8.04. Limitations of Liability, Remedies and Damages. Each Party acknowledges and agrees that in no event shall any officer, member of its governing bodies, employee, or affiliate of any Party be liable to any other person or Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party, or for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder, and the sole recourse for performance of the obligations under this Agreement shall be against the Parties, and not against any other person, except for such liability as expressly assumed by an assignee or guarantor pursuant to an assignment of this Agreement.

Section 8.05. Transfer of Interest in Agreement. No Party shall voluntarily assign or transfer this Agreement or any portion thereof, nor any of the obligations or rights hereunder, without the prior written consent and approval of the other Party, which consent shall not be unreasonably withheld or delayed.

Section 8.06. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 8.07. Relationship of the Parties.

(a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 8.08. No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

Section 8.09. Third Party Beneficiaries. This Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Section 8.10. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 8.11. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise.

Section 8.12. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 8.13. Further Assurances. Each Party agrees to execute and deliver such other instruments and documents and to take such other actions as may be reasonably necessary to complete performance hereunder and otherwise to further the purposes and intent of this Agreement.

Section 8.14. Application of Government Code and the Public Contracts Code. Pursuant to Section 80014(b) of the Water Code, the Department hereby determines that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

ATTORNEY GENERAL OF THE STATE OF
CALIFORNIA

By:_____

Name:

Title:

CALIFORNIA CONSUMER POWER AND
CONSERVATION FINANCING AUTHORITY

By: _____

Name:

Title:

CITY AND COUNTY OF SAN FRANCISCO

By: _____

Name: Dennis J. Herrera

Title: City Attorney

By: _____

Name: Patricia E. Martel

Title: General Manager, SFPUC

STATE OF CALIFORNIA DEPARTMENT OF
WATER RESOURCES, separate and apart from its
powers and responsibilities with respect to the State
Water Resources Development System

By: _____

Name:

Title:

Escrow Agreement

Key Milestones**2003**

Complete initial environmental assessment of sites	March 7
Negotiate dispatch limitations w/ CDWR	March 7
Issue RFP for EPC/O&M Contractor(s)	March 31
Select EPC/O&M Contractor(s)	July 1
Prepare draft AFC for filing w/ CEC	November 7
Obtain site control	December 31*

2004

File final AFC w/ CEC	January 31*
Issue RFPs Fuel Supplier, Schedule Coordinator	February 27
Select Fuel Supplier, Schedule Coordinator	May 7
Prepare bond solicitation documents	August 6
Complete financing, execute EPC Contract	December 1*
Issue Notice to Proceed	December 2

2005

First Firing of Turbines	May 1
Commercial Operation	June 1

* Power Purchase Agreement Milestone

Development Budget

EXECUTION COPY

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of January 23, 2003 (the "Agreement"), by and between the CITY AND COUNTY OF SAN FRANCISCO (the "City"), and U.S.Bank N.A. (the "Escrow Agent"), in its capacity as Escrow Agent hereunder;

W I T N E S S E T H:

WHEREAS, the Governor of the State of California, acting on behalf of the agencies, departments, subdivisions, boards, and commissions of the executive branch of the State of California, including without limitation the California Department of Water Resources; the California Electricity Oversight Board; the California Public Utilities Commission; the People of the State of California, by and through the Attorney General; The Williams Companies, Inc.; and Williams Energy Marketing & Trading Company and other named parties entered into a Settlement Agreement as of November 11, 2002 (the "Settlement Agreement"),

WHEREAS, certain payments were made to the Attorney General pursuant to the Settlement Agreement;

WHEREAS, the Attorney General has agreed to advance certain moneys in escrow for the development of a generating facility in the City;

WHEREAS, the Escrow Agent has agreed to serve as escrow agent with respect to such moneys;

WHEREAS, the parties wish to set forth herein the undertakings of the parties with respect to the matters set forth above,

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Definitions of Specific Terms. Unless the context shall clearly indicate some other meaning or may otherwise require, the terms defined in this Section 1 shall, for all purposes of this Agreement have the meanings herein specified, with the following definitions to be equally applicable to both the singular and plural forms of any terms herein defined and *vice versa*.

"Assets" shall have the meaning set forth in the Implementation Agreement.

“Authority” means the California Consumer Power and Conservation Financing Authority.

“Authorized City Representative” shall mean the person at the time designated by written certificate furnished to the Escrow Agent containing the specimen signature of such person and signed on behalf of the City by the General Manager of the San Francisco Public Utilities Commission. Such certificate shall designate an alternate or alternates.

“Authorized Department Representative” shall mean the Deputy Director or such person as authorized by a certificate provided to the City and the Escrow Agent containing the specimen signature of such person and signed on behalf of the Department by the Deputy Director, which certificate may also designate one or more alternates for such person.

“Department” means the Department of Water Resources with respect to its responsibilities pursuant to the AB 1X regarding the Electric Power Fund (as defined in AB 1X) separate and apart from its powers and responsibilities with respect to the State Water Resources Development System.

“Development Budget” shall have the meaning set forth in Section 2.04 of the Implementation Agreement.

“Development Costs” means Development Costs as defined in Section 4 of this Agreement.

“Escrow Account” means the special fund designated as the “City and County of San Francisco Electric Generating Project Development Escrow Account” created and established under, and to be held and administered by the Escrow Agent as provided in, Section 2 of this Agreement.

“Escrow Agent” shall mean the U.S. Bank N.A. or any successor thereto.

“Escrow Amount” means the amount received pursuant to Section 2.03 of the Implementation Agreement.

“EPC Contract” means EPC Contract as defined in the Implementation Agreement.

“Facility” means an electric generation facility consisting of one or more of the four (4) LM 6000 Gas Turbine Generator Sets designated as Unit Nos. 7, 8, 9 and 10 in the GE Agreement to be located in or near the City and/or the San Francisco International Airport with all other property, structures, equipment necessary for the generation and transmission of power to the Department in accordance with the Power Purchase Agreement.

“Facility Agreements” shall mean this Agreement, the Power Purchase Agreement, the EPC Contract, the Management Agreement(s) and the Implementation Agreement.

“GE Agreement” means the GE Agreement as defined in the Implementation Agreement.

“Government Obligations” shall mean non-callable direct obligations of, or obligations the timely payment of the principal of and interest on which is unconditionally guaranteed by, the United States of America.

“Implementation Agreement” means the Implementation Agreement among the Attorney General of the State of California, the City, the Authority and the Department.

“Investment Securities” shall mean any of the following which at the time are legal investments under the laws of the State for the moneys held hereunder:

(i) direct obligations of (including obligations issued or held in book-entry-form on the books of the Department of the Treasury), or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America; or

(ii) money market funds registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, the funds of which are exclusively invested in investments described in (i) through (x) herein, and having a rating by S&P of “AAAm-G”, “AAAm” or “AAm” and government short-term fixed income security mutual funds having a rating by S&P of “AAAF” or “S1” or better.

“Management Agreement(s)” means Management Agreement(s) as defined in the Implementation Agreement.

“Moody’s” shall mean Moody’s Investors Service, its successors and their assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized rating agency designated by the Escrow Agent.

“Power Purchase Agreement” means Power Purchase Agreement as defined in the Implementation Agreement.

“S&P” shall mean Standard & Poor’s Ratings Group, its successors and their assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized rating agency designated by the Escrow Agent.

“State” shall mean the State of California.

Section 2. Escrow Account; Appointment of Escrow Agent. There is hereby created and established a special escrow fund to be designated the “City and County of San Francisco Electric Generating Project Development Escrow Account” (hereinafter referred to as the “Escrow Account”). U.S.Bank N.A. is hereby appointed Escrow Agent hereunder. The Escrow Agent hereby accepts its appointment and agrees to act as Escrow Agent under the terms and conditions of this Agreement.

Section 3. Deposits to and Application of Escrow Account. There shall be deposited into the Escrow Account from time to time the Escrow Amount, which represents the amount of the proceeds derived pursuant to Section 2.03 of the Implementation Agreement, which, pursuant to Section 5 of this Agreement, is to be used and applied solely to the payment of the Development Cost of the Facility in accordance with the provisions hereof.

Section 4. Development Costs. As used in this Agreement the term “Development Costs” means all development costs related to Facility development (but not construction) to the extent included in the Development Budget which shall include but not be limited to:

(a) Payment of the cost of any title report required by the Implementation Agreement and any fees for any title curative documents needed to perfect or protect the title of the City to land acquired with respect to the Facility and the fees and expenses in connection with any actions or proceedings that the City may deem desirable to bring in order to perfect or protect the title of the City to land acquired with respect to the Facility;

(b) Payment of expenditures in connection with the preparation of planning, engineering and other studies, architectural drawings, surveys, tests, plans and specifications for the Facility, whether preliminary or otherwise, and all other preliminary work necessary or incidental to the development of the Facility;

(c) Payment of expenditures in connection with California Energy Commission or other governmental approval related to Facility location on the site, the cost of the Environmental Audit, as defined in the Implementation Agreement, other expenses to secure the site (but not including construction, demolition, grading or similar activities);

(d) Payment of the fees, if any, for architectural, engineering and supervisory services with respect to the development of the Facility;

(e) Payment for labor, services, materials, supplies, machinery, equipment and apparatus used or furnished in site improvement of land;

(f) Payment, as such payments become due, of the fees and expenses (including reasonable counsel fees and expenses and disbursements) of the Escrow Agent properly incurred under this Agreement;

(g) Payment of costs for economic and environmental feasibility reports whether preliminary or otherwise, including the Environmental Audit under and as defined in the Implementation Agreement; and fees, costs and expenses of appraising, printing, advice,

accounting and fiscal services, financial consultants, attorneys, clerical help and other independent contractors, agents and employees relating to or in respect of the development of the Facility;

(h) Payment of the cost of obtaining all regulatory approvals, including the cost of emission reduction credits (“ERCs”) or options therefor;

(i) Payment of the cost of shipment and storage of the LM 6000 Gas Turbine Generator Sets and the insurance thereof during any shipment or storage;

(j) Payment of the reasonable legal and administrative costs of negotiating, obtaining approvals for and preparing the Facility Agreements or any bid or solicitation documents in connection therewith;

(k) Payment of reasonable fees and expenses of the Authority to be incurred in the application for and procurement of all state license, permits and approvals necessary for the construction and operation of the Facility and activities related to supporting the City in developing the Management Agreement and EPC Contract as provided in Section 3.06 and Section 3.07 of the Implementation Agreement; and

(l) Payment of the reasonable fees and expenses of the Department incurred or to be incurred in negotiating, preparing and implementing the Financing Agreements.

Section 5. Requisitions. (a) The payments referred to in the preceding subparagraphs (a) through (l) of Section 4 may be made only upon receipt by the Escrow Agent of a written requisition for such payment signed by the appropriate Authorized City Representative with respect to Development Cost expenditures relating to such Facility:

(i) setting forth the requisition number; the name of the person, firm or corporation to whom payment is due or has been made (which may be the City, the Authority or the Department); the amount to be paid;

(ii) certifying that each obligation, item of cost or expense mentioned in such requisition is then due and payable and constitutes a “Development Cost” under Section 4 hereof; and that the payment is a proper charge against the Escrow Account and has not been the basis of any previous final payment; and

(iii) with respect to any City requisition, certifying that that the payment is in compliance with Section 2.04 of the Implementation Agreement.

(b) Upon receipt of each requisition and certificate referred to in subsection (a), the Escrow Agent shall pay each such obligation out of the Escrow Account. Payments pursuant to Section 5 of this Agreement shall be made only to the extent of funds available in the Escrow Account and invested in Permitted Investments. Development Costs properly incurred before the termination of the Power Purchase Agreement shall be paid pursuant to requisition notwithstanding the termination of the Power Purchase Agreement.

(c) Any requisition for Development Costs of the Department shall be submitted by the Authorized Department Representative to the City. The Authorized City Representative shall countersign and submit such requisition to the Escrow Agent for payment to the Department of Department Development Costs to the extent the requisition is in accordance with Section 2.04(c) of the Implementation Agreement.

Section 6. Instructions to Escrow Agent; Investment of Funds. (a) Only two types of submissions may be made to the Escrow Agent hereunder: (a) a requisition pursuant to Section 5, and (b) an investment instruction pursuant to this Section 6.

(b) Moneys in the Escrow Account shall be continually invested or reinvested by the Escrow Agent at the direction of the City, to the extent reasonable and practicable, in Investment Securities maturing in the amounts and at the times as determined by the Escrow Agent so that the payments required to be made from the Escrow Account may be made when due. The record or registered owner of any securities or other investments in which all or any part of any of the Escrow Account shall from time to time be invested shall be the Escrow Agent. In the absence of written direction from the City, moneys in the Escrow Account shall be invested in First American Treasury Obligation Fund, Class D money market fund.

(c) The Escrow Agent shall be authorized to sell any investment when necessary to make the payments to be made from the funds and accounts therein. All earnings on and income from moneys in the Escrow Account shall be deposited in the Escrow Account. All Investment Securities shall constitute a part of the Escrow Account.

Section 7. Right to Resign; Removal. The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. The Attorney General shall have the right to remove the Escrow Agent at any time by written notice to the parties to this Agreement specifying a replacement Escrow Agent.

Section 8. Transfer of Funds; Termination. (a) Subject to subsection (c), all moneys remaining in the Escrow Account after (i) completion of development of the Facility and the payment in full of all Development Costs, (ii) the City decides not to develop the Facility pursuant to Section 3.01(b) of the Implementation Agreement, or (iii) sale of the Assets pursuant to Section 4.02 thereof, shall be paid to the Electric Power Fund.

(b) Notwithstanding anything to the contrary herein contained, following the occurrence and during the continuance of an Event of Default by the City under and as defined in the Implementation Agreement, the Escrow Agent shall not make any distributions from the Escrow Account for Development Costs incurred after the occurrence of such Event of Default. Subject to subsection (c), upon the occurrence of an Event of Default by the City under the Implementation Agreement, in the event the Attorney General terminates the City's rights to make requisitions and takes possession of the Escrow Fund, the Escrow Agent shall transfer all money in the Escrow Fund for deposit in the Electric Power Fund.

(c) The Escrow Agent shall retain in the Escrow Account and shall not transfer amounts necessary to pay any requisition submitted in accordance with Section 5 and amounts sufficient for the payment of Development Costs incurred but (a) for which a requisition has not been submitted in accordance with Section 5, or (b) which are not then due and payable. In addition to the foregoing, the City, the Authority and the Department shall be entitled to reimbursement for all other reasonable, verifiable Development Costs which are either not included or are in excess of budgeted amounts set forth in the Development Budget from amounts remaining in the Escrow Account after the occurrence of the events referred to in subsection (a) above. Upon the occurrence of the events described in this Section 8 and the full payment of all Development Costs and the application of all other moneys in the Escrow Account in accordance with the provisions of this Section 8, this Agreement shall terminate.

Section 9. Escrow Agent. (a) The duties and obligations of the Escrow Agent hereunder shall be determined solely by the express provisions of this Agreement and the Escrow Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement.

(b) The Escrow Agent shall not be liable for any depreciation in the value of the Investment Securities acquired hereunder or any loss suffered in connection with any investment of funds made by it in accordance herewith, including, without limitation, any loss suffered in connection with the sale of any investment pursuant hereto.

(c) In making any such payments from the Escrow Account, the Escrow Agent may rely on any such requisitions and certificates delivered to it pursuant to this Section 9 and the Escrow Agent shall be relieved of all liability with respect to any such payments made in accordance with such requisitions and certificates.

(d) The Escrow Agent shall be fully protected in acting on and relying upon any written advice, certificate, notice, direction, instruction, request, or other paper or document which the Escrow Agent in good faith believes to be genuine and to have been signed or presented by the proper party or parties, and may assume that any person purporting to give such advice, certificate, notice, direction, instruction or request or other paper or document has been duly authorized to do so. The Escrow Agent assumes no responsibility for the genuineness, validity, value or collectibility of any Permitted Investment, but shall take no action which would adversely affect such genuineness, validity, value or collectibility.

(e) The Escrow Agent may seek the advice of legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the opinion of such counsel. If a controversy arises hereunder, as to whether or not or to whom the Escrow Agent shall deliver amounts available in the Escrow Account, or as to any other matter arising out of or relating to this Agreement or the funds deposited hereunder, the Escrow Agent shall not make any delivery of amounts available in the Escrow Account but shall retain it without liability to anyone until the rights of the parties to the dispute shall have finally been determined pursuant to Section 8

hereof. The Escrow Agent shall be entitled to assume that no such controversy has arisen unless it had received conflicting written notices from the City.

(f) The Escrow Agent shall be reimbursed and indemnified for, and held harmless against, any loss, liability or expense, including but not limited to reasonable counsel fees, incurred without bad faith or willful misconduct or gross negligence on the part of the Escrow Agent arising out of or in connection with its acceptance of, or the performance of its duties and obligations under this Agreement as well as the costs and expenses of defending against any claim or liability arising out of or relating to this Agreement; provided that the Escrow Agent shall be liable for a loss resulting from its own gross negligence, bad faith or willful misconduct with respect to the handling of funds. Payments to the Escrow agent pursuant to this subsection (f) shall be limited to the amounts available in the Escrow Account.

(g) The Escrow Agent shall not have any obligation by virtue of this Agreement to spend any of its own funds or to take any action which could, in its discretion, result in any costs or expenses being incurred by it.

(h) The Escrow Agent shall be entitled to receive compensation in an amount to be agreed upon by separate written agreement for its services as Escrow Agent hereunder.

(i) The provisions of this Section 9 shall survive any termination or expiration of this Agreement.

Section 10. No Liens or Encumbrances. Neither the City nor the Escrow Agent will not grant or permit to be imposed on the Escrow Account or any Investment Securities or moneys therein any lien or other encumbrance.

Section 11. Right to Resign; Removal. The Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect. No such resignation shall be effective until a replacement Escrow Agent has agreed in writing to be bound by the terms of this Agreement as Escrow Agent and the Escrow Account has been transferred to such replacement Escrow Agent.

Section 12. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of California, without regard to the conflicts of laws rules thereof.

Section 13. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Escrow Agent, the City and the Authority.

Section 14. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another

counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 15. Transfer of Interest in Agreement. (a) No party shall voluntarily assign or transfer this Agreement or any portion thereof, nor any of the obligations or rights hereunder, without the prior written consent and approval of the other party and the Attorney General.

(b) In the event the Authority exercises its option pursuant to Section 4.01(a) of the Implementation Agreement, the Authority shall immediately and automatically succeed to the City's rights and obligations hereunder.

Section 16. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 17. Third Party Beneficiaries. (a) Except as provided in (b), this Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

(b) The Department, the Authority and the Attorney General shall be third party beneficiaries hereunder to the extent of their interest herein.

Section 18. Headings. The headings contained in this Agreement are solely for the convenience of the parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 19. Notices. All notices, demands, requisitions or requests provided for in this Agreement shall be made in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the Parties to the addresses set forth in Appendix A. Notice by overnight United States mail or courier shall be effective on the next business Day after it was sent. A Party may change its addresses or add additional noticed Parties by providing notice of same in accordance herewith.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

U.S.BANK N.A., as Escrow Agent

By: _____

Name:

Title:

CITY AND COUNTY OF SAN FRANCISCO

By: _____

Name:

Title:

Notices

US Bank

City and County of San Francisco

Mail Instructions

U.S. Bank Trust National Association
One California Street, Suite 2550
San Francisco, CA 94111
Attn: Sheila Soares

SFPUC, Finance Director
1155 Market Street, 5th Fl.
San Francisco, CA 94102
Attn: Kingsley C. Okereke
KOkereke@sfwater.org

Phone: (415) 273-4582

Fax: (415) 273-4591

Phone: (415) 487-5256

Fax: (415) 487-5258

Wire Instructions

ABA

BANK:

FBO:

A/C:

Department of Water Resources: as per the Power Purchase Agreement